

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:07cr9HTW-JCS

JAMES FORD SEALE

TRIAL TRANSCRIPT  
VOLUME 6

BEFORE THE HONORABLE HENRY T. WINGATE  
UNITED STATES DISTRICT JUDGE  
AND A JURY  
JUNE 6, 2007  
JACKSON, MISSISSIPPI

## APPEARANCES:

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MR. ERIC GIBSON  
MR. DUNN LAMPTON  
MS. ANGELA GIVENS

FOR THE DEFENDANT: MS. KATHY NESTER  
MR. GEORGE LUCAS

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1                   THE COURT: Good morning. I have a written or a brief  
2 from the government, but I don't have one response from the  
3 defense.

4                   MS. NESTER: I just got it about five minutes ago,  
5 Your Honor, so that's why you don't have a response from me.

6                   THE COURT: Okay. Let me turn to the government.

7                   MR. LUCAS: Your Honor, I'm sorry. Can we get the  
8 hearing aid for Mr. Seale?

9                   THE COURT: Okay. Now, then, let me repeat what I  
10 said. Is the microphone -- is the earphone working,  
11 Ms. Nester?

12                  MS. NESTER: Yes, sir.

13                  THE COURT: What I said was that I have a brief  
14 submitted to the court by the government. This brief is in ten  
15 pages and it includes some exhibits. In addition, the  
16 government has provided to me a number of cases, about seven  
17 cases, I believe, for the court to review on this issue. I  
18 don't have a response from the defense. Ms. Nester, how long  
19 will it be before you can give me a response?

20                  MS. NESTER: Obviously, I'm going to need an  
21 opportunity to go back and read their authorities, read their  
22 materials, read their exhibits, do my own response. If Your  
23 Honor wants to complete Mr. Edwards' redirect and then if we  
24 need to reopen him based on this, we can do that later. I  
25 don't have an objection to that, but obviously I'm not in a

1 position when I get handed something five minutes before. I  
2 was on my e-mail last night until after 10:30 and had not seen  
3 this come across, and I just got it this morning when I arrived  
4 in court.

5 THE COURT: Okay. Well, it wasn't filed last night, I  
6 don't believe.

7 MS. FITZGERALD: It was, Your Honor. It was filed at  
8 approximately 11:30 last night and that's as soon as I could  
9 get it done. I filed it electronically so it would be  
10 available to the court and all the parties as fast as I could.

11 THE COURT: All right. I'm not complaining about the  
12 time. I was just commenting that it wasn't until -- it had to  
13 be much later because I didn't leave here until about 10:00  
14 myself last night. So I would have seen it had it come across,  
15 but I understand.

16 So to the government, I agree with the procedure that  
17 defense counsel has suggested, which is to allow her an  
18 opportunity to respond and then if the court rules in your  
19 favor, to allow you to recall this witness. What's your  
20 response?

21 MS. FITZGERALD: Your Honor, I would note that this is  
22 an issue that was certainly brought to the attention of defense  
23 counsel before we left yesterday afternoon and counsel had just  
24 as much opportunity to research this issue last night as the  
25 government did. The fact that the government has provided

1 ample authority to this court to support its position to allow  
2 these statements to come in at this point and to do a thorough  
3 and complete and persuasive redirect of this witness, I need to  
4 be able to reference those statements. Otherwise, this is  
5 going to look -- it's not going to be nearly the presentation  
6 that I'm entitled to do with this particular witness and  
7 bringing it in piecemeal. I don't think it's going to be -- I  
8 don't think it's going to be effective. I don't expect that  
9 absent those statements my redirect would be very long, and so  
10 if we're going to -- recalling him is not going to be  
11 significantly different in length by allowing me to do the  
12 entire redirect at one time rather than doing it piecemeal, and  
13 I would object to that. I'd like to be able to do my entire  
14 redirect in one piece.

15 THE COURT: Well, then, that will require that I  
16 require defense at this point to respond to your brief, which  
17 wasn't filed in its detail until late last night.

18 MS. FITZGERALD: Yes, Your Honor.

19 THE COURT: So, then, I will not proceed that way;  
20 otherwise, that would be unfair to the defense. So, then, we  
21 have two options. One is for you to conclude your redirect and  
22 then await the court's determination as to whether redirect may  
23 be reopened upon a favorable ruling by the court or to simply  
24 defer redirect to later in the trial, to proceed with another  
25 witness and come back to Edwards after the court has made its

1       ruling. Now, which one of those procedures would you prefer?

2                  MS. FITZGERALD: May I have just a moment to confer  
3 with my cocounsel?

4                  THE COURT: Go right ahead.

5                  (Short Pause)

6                  MS. FITZGERALD: Your Honor, the government would  
7 request that the court instruct the jury that the court needs  
8 to decide a legal issue before we can continue the redirect of  
9 Mr. Edwards, and so they will be hearing from him again at a  
10 later time and not to form any opinions as to his testimony at  
11 this time, and we would proceed with another witness.

12                 THE COURT: Okay. That's what I'll do.

13                 MS. NESTER: I would object to the language about not  
14 forming any opinions as to his testimony. Obviously, they are  
15 entitled to form opinions based on his cross-examination. I  
16 know Your Honor will use the proper language, but that  
17 particular phrase I would object to.

18                 THE COURT: Okay. Now, then, who will be your next  
19 witness?

20                 MS. FITZGERALD: Your Honor, we're going to need a few  
21 minutes to get somebody over here.

22                 THE COURT: Okay. Then --

23                 MS. FITZGERALD: It will be James Bladh.

24                 THE COURT: Who?

25                 MS. FITZGERALD: James Bladh. He's one of the Navy

1           divers.

2           THE COURT: Is ten minutes enough time?

3           MS. FITZGERALD: Yes, Your Honor.

4           THE COURT: We'll be in recess for ten minutes.

5           MS. FITZGERALD: Thank you.

6           (Recess)

7           MS. FITZGERALD: Your Honor, I want -- the court might  
8 consider taking an extended lunch break to allow Ms. Nester to  
9 respond so that we might have to have the possibility of  
10 Mr. Edwards concluding his testimony rather than having it  
11 broken up by at least an entire day of the court, especially  
12 since the witness is, in fact, here.

13          THE COURT: I will agree with that. We will -- I will  
14 take an extended lunch break and allow Ms. Nester to do that.

15          MS. FITZGERALD: Thank you, Your Honor.

16          THE COURT: Okay. Who do you tell me the first  
17 witness will be?

18          MR. LAMPTON: James Bladh.

19          THE COURT: Okay. Now, where is the witness, where is  
20 he now?

21          MS. FITZGERALD: I don't know. I told him that he was  
22 released until lunch.

23          THE COURT: Okay, then. So he's not in the building?

24          MS. FITZGERALD: He's not in the building. At least I  
25 don't believe that he's in the building.

1                 THE COURT: Okay, then.

2                 MS. FITZGERALD: I told him that he did not need to  
3 remain here and they were on their way out of the courthouse.  
4 I assume that they are gone.

5                 THE COURT: Okay, then.

6                 MS. FITZGERALD: Your Honor, if I may in advance  
7 request a five-minute break in between the first witness and  
8 the second witness. The second witness is not here yet. He is  
9 elderly and I have promised him that I would speak with him at  
10 least briefly before I put him on the witness stand, and I have  
11 not had an opportunity to do that this morning. I would  
12 request simply five minutes to speak with him before I put him  
13 on the witness stand.

14                 THE COURT: Okay. Ms. Nester?

15                 MR. GIBSON: Your Honor, I believe we're ready at the  
16 court's convenience.

17                 THE COURT: Okay. Thank you.

18                 MR. GIBSON: Your Honor, Mr. Lucas and I have gone  
19 through a number of exhibits that will be used through  
20 Mr. Bladh's testimony. There's no dispute as to any of them, I  
21 believe.

22                 THE COURT: Okay. Just one second. Counsel, why  
23 don't you give me a list of exhibits to which there are no  
24 objections.

25                 MR. GIBSON: Referring to the government's exhibit

1 list, Your Honor, it is essentially the first two pages and the  
2 first two exhibits on page 3, and I'll go through those, G-1A,  
3 which is the dive report prepared by this witness; G-1B, which  
4 is a diagram prepared by this witness and included in the  
5 report that is G-1A; G-1C, a diagram also prepared from  
6 information provided by this witness which he's going to  
7 utilize in his testimony; and then G-2A through F is a series  
8 of photographs of the dive activity the night it was recovered;  
9 G-3A through L is another set of photographs of the dive and  
10 items recovered, including personnel who participated in the  
11 dive.

12 THE COURT: G-1A, G-1B, G-1C, G-2A through F, G-3A  
13 through L. Those are the exhibits?

14 MR. GIBSON: Correct.

15 THE COURT: All right. What says the defense,  
16 Mr. Lucas?

17 MR. LUCAS: We have no objection to those exhibits,  
18 Your Honor.

19 THE COURT: They will be admitted.

20 (Exhibits G-1A, G-1B, G-1C, G-2A through F, G-3A through L  
21 marked)

22 THE COURT: Are you ready for the jury now?

23 MR. GIBSON: Yes, sir.

24 THE COURT: Defense ready?

25 MR. LUCAS: Yes, Your Honor.

1 THE COURT: Bring in the jury.

2 (Jury In)

3 THE COURT: Good morning. When you recessed, the  
4 witness, Mr. Charles Edwards, was testifying. He has now  
5 testified on direct and on cross, and the next time you hear  
6 from him he will be testifying on redirect. Remember that a  
7 witness is subjected to direct examination, then  
8 cross-examination, and then if the calling party wishes to ask  
9 additional questions based upon a cross-examination, then that  
10 party conducts a redirect examination. So ordinarily at this  
11 point, Mr. Edwards would be on the stand under redirect  
12 examination. However, he is not going to testify on redirect  
13 examination now. We're going to take some witnesses up and  
14 then come back to him. So his testimony is incomplete at this  
15 point and will be complete when he is examined on a redirect  
16 examination. So that will be sometime later in the trial.

17 Now, we're going to proceed with the next witness. Who is  
18 the government calling?

19 MR. GIBSON: Government calls James Bladh.

20 THE COURT: All right. You have your pictures on him,  
21 do you not? Okay. We're ready to go forward.

22 MR. GIBSON: Your Honor, may we have a moment? The  
23 witness may have gone to the restroom.

THE COURT: Okay.

25 MR. GIBSON: May I step out for a moment?

1                   THE COURT: You may.

2                   (Short Pause)

3                   JAMES BLADH,

4                   Having first been duly sworn, testified as follows:

5                   DIRECT EXAMINATION

6                   BY MR. GIBSON:

7                   Q. Good morning, Mr. Bladh.

8                   A. Good morning.

9                   Q. Sir, could you spell your last name for the record, please,  
10                  for the stenographer?

11                  A. Bladh, B-L-A-D-H.

12                  Q. Thank you, sir. Now, I notice you're wearing a hearing  
13                  aid. If at any point during our discussion you can't hear  
14                  what's being said, I need you to indicate that to me in some  
15                  fashion.

16                  A. All right.

17                  Q. Okay. And I need you to lean forward so that that  
18                  microphone can capture what you're saying so the ladies and  
19                  gentlemen of the jury can hear you. Okay?

20                  A. All right.

21                  Q. Now, sir, were you once in the United States Navy?

22                  A. Repeat.

23                  Q. Were you in the United States Navy, sir?

24                  A. Yes.

25                  Q. Are you having difficulty with your hearing aid?

1 A. You're loud enough, but it's distorted.

2 THE COURT: Let's try the earphones.

3 BY MR. GIBSON:

4 Q. We have a device to assist you with that. We're going to  
5 give that a try. Okay?

6 A. All right. Speak slow for me, please.

7 Q. That's often a problem for me. I have to speak slow  
8 anyway. Sir, were you once in the United States Navy? Were  
9 you in the Navy, sir?

10 A. I'm sorry. I just can't hear you.

11 THE COURT: We need to determine what's the proper  
12 approach here, so let me excuse you just for a few minutes  
13 while we experiment.

14 (Jury Out)

15 THE COURT: Now, then, let's see if we can hook him up  
16 again with the earphones. Now, let's see -- let's make sure  
17 it's up, make sure the volume is up. Let's try it. Can you  
18 hear me, sir?

19 BY MR. GIBSON:

20 Q. Can you hear us, sir?

21 MR. GIBSON: Can we try a different headset, perhaps.

22 THE COURT: Okay. Try a different one.

23 A. I believe my hearing aids are better than this.

24 MR. GIBSON: Let's try another set first.

25 A. Okay.

1                   THE COURT: Can you hear?

2 BY MR. GIBSON:

3 Q. Can you hear us, sir?

4 A. Yeah. But this is my deaf ear, and it's coming in here. I  
5 don't understand that.

6 BY MR. GIBSON:

7 Q. You can understand me, sir? You can hear me?

8 A. Yes.

9                   THE COURT: Can you hear okay now?

10                  THE WITNESS: I hear you -- it's plenty loud, Your  
11 Honor, but it just sort of crowds together, you know.

12                  THE COURT: What about now?

13 A. It's okay.

14                  THE COURT: Listen to his test, give a test.

15 BY MR. GIBSON:

16 Q. Can you hear me, sir?

17 A. Yes, I hear you.

18 Q. Can you understand what I'm saying?

19 A. Right now, yes.

20 Q. Is it coming through clearly?

21 A. It's coming through clearly.

22                  THE COURT: Okay. All right. Now, then, let's bring  
23 the jury back in.

24 (Jury In)

25                  THE COURT: You may proceed.

1 BY MR. GIBSON:

2 Q. Good morning again, sir.

3 A. Good morning.

4 Q. Now, how old are you today, sir?

5 A. I'm 71.

6 Q. Okay.

7 A. I mean 81. Excuse me.

8 Q. And did you serve as an officer in the United States Navy?

9 A. Yes, I did.

10 Q. How long were you in the United States Navy?

11 A. Thirty years.

12 Q. And when did you go into the Navy? What year did you  
13 start?

14 A. 1943.

15 Q. What year did you retire, sir?

16 A. 1973.

17 Q. Are you retired currently?

18 A. Repeat.

19 Q. Are you retired now?

20 A. Am I retired now?

21 Q. Yes, sir.

22 A. I do some consulting work but, yes, I am retired.

23 Q. Who do you consult for?

24 A. I work for -- with the American Salvage Association and  
25 with Pax River, Patuxent River Naval Command, and that's all.

1 Just a few hours a week.

2 Q. Very good. What was your rank when you retired from the  
3 United States Navy?

4 A. Lieutenant commander.

5 Q. And did you have a specialty while you were in the United  
6 States Navy?

7 A. Yes, I did.

8 Q. What was that specialty, sir?

9 A. I was with the diving and salvage.

10 Q. And how long were you a United States Navy diver?

11 A. I went through diving school in 1955 and then continued  
12 with diving in the diving part of the Navy until my retirement.

13 Q. Now, if I could, sir, I'd like to direct your attention to  
14 1964. At that time, what was your rank in the United States  
15 Navy?

16 A. At that time, I was a lieutenant.

17 Q. And in 1964 as a lieutenant in the Navy, did you command a  
18 Navy dive team?

19 A. Yes, I did.

20 Q. And was that dive team responsible for salvage and recovery  
21 operations?

22 A. Yes, it was.

23 Q. Now, specifically, sir, do you recall receiving orders to  
24 go to Mississippi in October of 1964?

25 A. Yes, I did.

1 Q. Were you in command of the team that conducted dive  
2 operations from October 25th of 1964 through October 31st of  
3 1964?

4 A. I was.

5 Q. And in connection with that dive, were you required to  
6 prepare an official United States Navy report of your  
7 activities during those days in 1964?

8 A. Yes, I was.

9 Q. Sir, as to the dates and the times and the specificity of  
10 the operations in 1964, do you have an independent memory of  
11 that without reference to the report?

12 A. Some of it, yes.

13 Q. Will the report assist you with respect to the dates and  
14 times that you don't recall?

15 A. Yes, it would.

16 MR. GIBSON: I have marked as Government's Exhibit 1A  
17 a document which I'd like to show to the witness at this point.  
18 We discussed this previously.

19 THE COURT: All right. Let me advise the jury that I  
20 have admitted into evidence the following exhibits: G-1A,  
21 G-1B, G-1C, G-2A through F, G-3A through L. They have already  
22 been admitted outside your presence. Now, then, counsel may  
23 proceed.

24 MR. GIBSON: May I have G-1A shown to the witness,  
25 please?

1 THE COURT: You may.

2 BY MR. GIBSON:

3 Q. I'd like you to take a moment, please, and look at the  
4 document in your hand that's been labeled G-1A. Do you  
5 recognize that?

6 A. Yes, I do.

7 Q. Okay. Is that the report you prepared in 1964 in reference  
8 to the dive?

9 A. Yes, it is.

10 Q. Now, could you tell us a little bit about the circumstances  
11 under which you found yourself here in 1964. Who was with you  
12 on the dive team?

13 A. I had a dive team of about five people. You want their  
14 names?

15 Q. Yes, please.

16 A. Okay. It was Chief Kilgore, Chief Mintz, Chief Mays, Louie  
17 Mets, I think, and Wright.

18 Q. Now, I'd like to show this exhibit which has been  
19 previously marked as G-3L. Sir, do you see the television  
20 screen in front of you?

21 A. Yes. This was the dive team.

22 Q. Are you in that photograph, sir?

23 A. Yes, I am.

24 Q. Where are you in the photograph?

25 A. I'm on the extreme left.

1 Q. Is that you standing?

2 A. Yes.

3 Q. With about the same haircut? Just kidding, sir. Now, when  
4 you got to Mississippi, do you recall why were you directed to  
5 Mississippi? What was the purpose of the dive operation?

6 A. It was a recovery operation.

7 Q. And what specifically were you to be searching for, sir?

8 A. Repeat that.

9 Q. What were you to be searching for? You indicated it was a  
10 recovery.

11 A. It was, and there was some stuff in the paper, but we in  
12 the diving lockers, because we get involved in airplane  
13 crashes, all this, and this is what we referred to as a body  
14 job.

15 Q. It was your understanding that you were to search for human  
16 remains. Is that correct?

17 A. To look for human remains.

18 Q. When you got to Mississippi, did you -- what equipment did  
19 you bring with you to Mississippi to conduct the operation?

20 A. We brought our diving gear, which was scuba bottles. We  
21 brought our search lines for performing both jackstay and  
22 circle line searches.

23 Q. Okay. Now, when you first got here, did you determine that  
24 there may or may not be a need for additional equipment?

25 A. Oh, we didn't know until we made the first dive and we saw

1 how cluttered the river bottom was and muddy where we couldn't  
2 see anything. Then we decided we're going to need some locator  
3 gear to help us on this job.

4 Q. Okay. Now, as a result of the dive operations that you  
5 conducted in '64, as part of your report, did you prepare a  
6 diagram of the operation?

7 A. Yes.

8 MR. GIBSON: If I could have the witness shown  
9 Government's Exhibit G-1B, B as in boy.

10 BY MR. GIBSON:

11 Q. Now, sir, could you again take a look at the screen in  
12 front of you. Is that the diagram that you prepared for your  
13 report?

14 A. Yes, it is.

15 Q. Okay. And I'm going to come back to that in a minute.

16 MR. GIBSON: I'd like to show the witness what has  
17 been marked as G-1C for identification, please.

18 BY MR. GIBSON:

19 Q. Can you take a look at the screen. Do you recognize G-1C,  
20 sir? You have to answer audibly, sir.

21 A. This was not my diagram. This is one that I sent to one of  
22 the agents and he composed this diagram.

23 Q. Was that using information that you had provided to him?

24 A. Yes.

25 Q. And is this a fair and accurate depiction of the area that

1 you searched back in October of 1964?

2 A. Yes, it was. And this -- and I -- this was all done by  
3 seaman's eye, by estimates. We didn't have any instruments to  
4 take measurements, but it's very close.

5 Q. Okay. So you are referring to the specific measurements in  
6 feet. You did that based on seaman's eye, as you say?

7 A. Yes.

8 Q. Okay. Now, when you first got to Mississippi, where did  
9 you stay? This dive took place over several days, you told us.  
10 Where did you stay?

11 A. We stayed in Vicksburg.

12 Q. Okay. And you stayed overnight in Vicksburg. Would you  
13 then drive to the dive site every day?

14 A. Yes.

15 Q. Now, there was an indication on the diagram that was  
16 prepared by the FBI that there was a campsite on that diagram.  
17 Do you recall there being a campsite?

18 A. I'm sorry. I didn't hear.

19 Q. Do you recall there being a campsite also at the dive  
20 location?

21 A. I still can't get that.

22 Q. Do you recall there being a campsite, sir, some tents?

23 A. The campsite there, yes.

24 Q. Okay. Why was the campsite there? What was the purpose of  
25 that?

1 A. My understanding from talking to the agents, that it was to  
2 protect our divers.

3 Q. And did agents stay behind at the campsite in the evenings  
4 when you would return to Vicksburg?

5 A. We were in Vicksburg and then so many agents and state  
6 police people stayed at the campsite.

7 Q. Okay. Now, on the day that you began search operations,  
8 did you come into contact or did you see any livestock?

9 A. Did I see what?

10 Q. Any livestock, sir, on the day when you started dive  
11 operations?

12 A. I didn't hear you.

13 Q. Any animals, sir, any cattle or livestock?

14 A. Oh, no, no. Didn't see any livestock. I think over on the  
15 other side of the river, but I didn't pay any attention to it.  
16 There were some cattle.

17 Q. Did you have occasion to encounter those cattle or to have  
18 to address the situation with the cattle at any time during  
19 your dive operation?

20 A. At one time -- if I understand your question, at one time  
21 when I had the divers, they drove about a -- I don't remember  
22 how many -- but they drove a few cattle across the river.  
23 There was no threat. I got the drivers out of the water before  
24 the cattle got there, but it did interrupt the diving  
25 operations.

1 Q. So prior to the cattle being driven across the river, you  
2 had already started dive operations. Is that correct?

3 A. That's correct.

4 Q. And you had to terminate those diving operations because  
5 the cattle were driven through that area?

6 A. That's correct.

7 Q. Can you indicate for the ladies and gentlemen of the jury,  
8 using this diagram, where about did that cattle drive take  
9 place?

10 A. As I recall, I would say from the southern end of the  
11 diagram at Parker's Landing just about straight across or a  
12 little bit more to the east.

13 Q. Did you have any warning before that cattle drive started?

14 A. Did I have any what?

15 Q. Did anybody warn you that they were bringing cattle across  
16 before you had to get your men out of the water?

17 A. I don't recall. I think probably the agents said, "Looks  
18 like we've got some cattle coming this way" or something like  
19 that, but I don't remember.

20 Q. Okay. And as you were conducting search operations, were  
21 there any individuals not associated with the dive team who  
22 were watching the dive?

23 A. Any individuals not associated with the diving team?

24 Q. Watch the dive? Was there anybody watching what you were  
25 doing from the banks?

1 A. Yes, all the agents that were there.

2 Q. Did you see anybody else watching while you were there?

3 A. I never noticed them.

4 Q. Now, when you arrived and began conducting dive operations,  
5 was there any discussion about where you wanted to start your  
6 search?

7 A. Well -- yes, there was. I wanted to start the diving right  
8 in the area that's marked as Parker's Landing. To me, if  
9 something was put in the river, that's probably in the area it  
10 would be. But the agent in charge wanted me to go further  
11 to the -- let's see. That would be further to the -- I think  
12 over to the east to start the operation and sort of -- this is  
13 my own assumption. I think that they didn't want us to go  
14 right to where the remains were on the first dive because it  
15 would indicate that we knew exactly what was there and when we  
16 were -- that they were tipped off. So they -- I guess they  
17 didn't want their source known.

18 Q. So on October 27th of 1964, you described the specific  
19 initial dive operations as a, quote, blind. Is that correct?

20 A. Yes.

21 Q. Now, could we go back to G-1B, please, for a moment. Now,  
22 on this diagram --

23 MR. GIBSON: If we could blow it up, please.

24 BY MR. GIBSON:

25 Q. The number 1 that appears on the key, that indicates dive

1 operations for the first set of dives. Is that correct?

2 A. On the blue one, the braided wire?

3 Q. Yes, sir.

4 A. Yes, all this was on there.

5 Q. And let's talk about how you searched, how you conducted  
6 the search.

7 A. To start with, where you see the circles, that's where you  
8 call it a circle line search. And depending on the bottom  
9 terrain and all that, you put an anchor down to, say, a 30-foot  
10 line at the anchor and then one diver goes to the bottom and  
11 sits on the anchor. The other diver stretches a line out at  
12 the 30 feet and then he swims around the diver -- the anchor  
13 then goes slowly in and out on that line so he covers all the  
14 area in the circle.

15 Q. Now, what was the necessity for the use of the ropes? Why  
16 were you using the ropes?

17 A. Well, to keep track of it. Like you have your anchor, your  
18 anchor is fixed, and a rope is out there and it circles around.  
19 And you know exactly that you have covered a diameter the  
20 length of that rope in a complete circle.

21 Q. And how is this search being conducted? Is there any  
22 visibility in this area where you're searching?

23 A. Absolutely no visibility. It's all done by hand.

24 Q. What was interfering with your ability to see under water?  
25 Tell us what that was like.

1 A. Say that again.

2 Q. Why couldn't you see under the water? Describe the water  
3 for us, please.

4 A. Well, it was all the mud that was kicked up. Even if there  
5 was a vague visibility when you start, the minute you touch the  
6 bottom, all the clouds come up and you're absolutely blind.

7 Q. So what are you using to search if you're not using your  
8 eyes? What are the divers using to actually search?

9 A. What are the divers using what?

10 Q. To search? If they can't use their eyes, how are they  
11 searching the bottom?

12 A. Just by feel.

13 Q. As indicated on your diagram, you did three of those circle  
14 line searches during the blind search on October 27th. Is that  
15 right?

16 A. Correct.

17 Q. Now, you also mentioned a little bit earlier that you  
18 utilized a technique called a jackstay search. Could you  
19 describe that for us, please.

20 A. The jackstay -- first of all, the first stay searches were  
21 at the two extreme ends where we did the circle line, then the  
22 jackstay searches, the river is not that far across, maybe  
23 100 feet or something like that, and you string a line from one  
24 end -- straight across the river, and then the divers start and  
25 they, the two divers together, one on each side of the line,

1 and they go across the bottom of the river searching. And when  
2 they get above, then they move the jackstay up, whatever, it's  
3 about 20 feet, and do the same thing. They go back and forth.

4 Q. So I notice you also did -- excuse me -- another three  
5 circle line searches on the first day but much further to the  
6 north. Is that correct?

7 A. Did what?

8 Q. You also did three circle line searches much further to the  
9 north during that first day. Is that correct?

10 A. Yes.

11 Q. That was also part of the blind search?

12 A. Yes.

13 Q. On the second day, you started the jackstay searches. Is  
14 that right?

15 A. That's correct, yes.

16 Q. Was anything located on the second day during the jackstay  
17 search?

18 A. No, nothing was located.

19 Q. When you got to the third search, how did you perform the  
20 third-day search?

21 A. The third-day search was jackstay searches and all those  
22 little circles were really the divers just dropping down at the  
23 end of the pier at different spots and searching at the end of  
24 the pier because we thought if something was thrown in, it  
25 might be right at the end of that pier or barge, whatever it

1 was.

2 Q. And that search was unsuccessful right off the pier. Is  
3 that correct?

4 A. That was unsuccessful too.

5 Q. Okay. Now, on the fourth day, were you still conducting  
6 jackstay searches on the fourth day?

7 A. Yes.

8 Q. And did you begin to find items on the fourth day?

9 A. Yes, we did. Different things, some of them we couldn't  
10 identify, but yes.

11 Q. When you found something, whether it appeared to be of  
12 significance in the case or not, you still marked where you  
13 found something. Is that right?

14 A. Yes, we would mark it on a map.

15 Q. In fact, you marked them on this diagram in the areas where  
16 you found items. Is that correct?

17 A. Right. These were estimated, of course.

18 Q. And on October 13th of 1964, did you find anything of  
19 significance?

20 A. On that day, there debris was found, but nothing really of  
21 significance.

22 Q. Well, sir, referring specifically to your report on  
23 October 30th, can you read for us what you recorded as having  
24 been determined on that day.

25 A. What we determined is what we would call into a hot area

1 and that we were in the right place and continued searching.

2 Q. And please read from the report, tell us what you  
3 documented in your report as to what was located that day for  
4 October 30th, 1964.

5 A. Was October 30th the fourth day or the fifth day?

6 Q. On your report, sir, it's dated October 30th.

7 MR. GIBSON: Can we bring that up, Government's  
8 Exhibit G-1A, please. Go to page 3. Can we highlight October  
9 30th.

10 BY MR. GIBSON:

11 Q. Sir, I'd like you to take a look at the screen for  
12 October 30th. Do you see that?

13 A. Yes, sir.

14 Q. Can you read that?

15 A. Yes, sir.

16 Q. Can you read that to us, please.

17 A. It says, "Jack Wellhoner arrived at 0100, covered area  
18 indicated as day 4 in enclosure 3. The MTG" -- the motor grade  
19 gravitometer -- "operated as designed."

20 Q. Take your time, sir. Actually, what is the MTG? What is  
21 that?

22 A. That's an instrument that will pick up metal objects.

23 Q. A metal detector?

24 A. Pardon?

25 Q. It's a metal detector?

1 A. Yes.

2 Q. Okay. And then you go on to describe assorted pieces of  
3 scrap metal. Can you indicate that to us, please. You may  
4 refer to the screen, sir. It's larger print. Mr. Bladh?

5 A. Yes.

6 Q. You may refer to the screen in front of you, the larger  
7 print. Can you read that?

8 A. Yeah. Let me get it on mine. I can read it better than  
9 that screen.

10 Q. Let me read it to you and you tell me if I get it correct.  
11 Okay?

12 A. All right.

13 Q. "Jack Wellhoner arrived at 0100. Covered area indicated as  
14 day 4 in enclosure 3. The MTG operated as designed. Assorted  
15 pieces of scrap metal were buoyed and recovered. On the fifth  
16 pass, Chief Martin and Chief Bends recovered two pieces of  
17 railroad track approximately four and a half feet long and two  
18 heavy metal rollers all connected together with logging  
19 chains."

20 A. That's correct.

21 Q. "The divers also recovered a shirt and what appeared to be  
22 human rib bones. These were approximately 150 feet southwest  
23 of Parker's Landing off the north bank indicated by drop 5 on  
24 enclosure 3. Diving operations ceased at this point until the  
25 following day. Lieutenant Stewart and Wilson, MNI, arrived at

1 1400 with their backup locating equipment."

2 A. That's correct.

3 Q. Now -- and that's what you documented in your dive report  
4 to the United States Navy. Correct?

5 A. Sir?

6 Q. That's what you wrote down for the United States Navy.  
7 Correct?

8 A. Yes.

9 Q. And that's what you recorded in your diagram?

10 A. Yes.

11 Q. Okay. Now, on October 31st, you returned again to the same  
12 location to conduct additional dives. Is that correct?

13 A. Yes.

14 Q. And that's also indicated on your diagram and also in your  
15 report. Is that fair to say?

16 A. That's correct, yes.

17 Q. Now, directing your attention to October 31st, the entry on  
18 your report of 1964, I'm going to read it and you tell me if  
19 I'm getting it correct. Okay?

20 A. I didn't get that.

21 Q. I'll read it to you and you tell me if I'm reading your  
22 report correctly. Okay?

23 A. Okay.

24 Q. "October 31st, Chief Bends and Chief Martin made another  
25 dive on drop 5 to recover any additional remains that may

1 possibly have been in this area. Continued searching, using  
2 the MTG indicated as day 5 on enclosure 3. Three contacts were  
3 made and buoyed. On drops 7 and 8, Lieutenant Stewart and  
4 Wilson, MNI, recovered an engine block with a piece of logging  
5 chain. In the chain was a shirt and what appeared to be more  
6 human remains. Next to the engine, a human skull was  
7 recovered. This was located approximately 50 feet upstream  
8 from the other contact where apparent human remains were found.  
9 This completed the diving and recovery operations. Made  
10 preparations to secure and return all equipment." Did I read  
11 that correctly, sir?

12 A. That's correct.

13 Q. Okay. Now, after you finished the October 31st dive, the  
14 very last dive where the engine block was recovered, what  
15 happened next? Did you stay in Mississippi or what happened?

16 A. No, the agent in charge said for us to pack up and go  
17 directly from the dive site back to Panama City. Don't stop  
18 anyplace, just go, and that they would check us out of the  
19 hotel room and anything that we left behind they would ship to  
20 us.

21 Q. And Panama City, was that where you had been stationed,  
22 sir?

23 A. That's where I was stationed.

24 Q. And Panama City is located where?

25 A. Pardon?

1 Q. Panama City is where? In what state?

2 A. It's on the Gulf Coast of Florida.

3 Q. Okay. Now, if I understood you correctly, you weren't  
4 permitted to go back to the hotel to get your belongings. Is  
5 that what you told us?

6 A. We did not.

7 Q. Why was that, sir?

8 A. I assume it was because that we might be threatened or some  
9 reason. I don't know.

10 Q. Now, when you initially got there, was there any discussion  
11 about whether you would openly display Navy insignia or Navy  
12 uniforms?

13 A. No, we were told not to wear any uniforms or discuss it --  
14 discuss this outside of the actual dive area to anybody or why  
15 we were there.

16 Q. Okay. Now, what I'd like to do is show you some  
17 photographs, sir, if I could. And I'd like to start with what  
18 was previously marked as Government's Exhibit 2, A through E.  
19 These photographs will appear on the screen in front of you,  
20 sir. First up will be G-2A. Do you recognize that, sir?

21 A. Yes, that's one of the divers -- I'm not sure which one --  
22 with some rollers and looks like railroad track.

23 Q. Okay. And if I could direct your attention to G-2B. Do  
24 you recognize that, sir?

25 A. Yeah. That looks like some more of the same, the rollers.

1 Q. And that's basically how they looked in 1964?

2 A. Yes.

3 Q. Okay. If we could go to G-2C. Do you recognize G-2C?

4 A. Well, that's two divers standing there and looks like some  
5 debris at their feet of some type that I can't make out.

6 Q. Taking a look at G-2D, do you recognize what's depicted in  
7 G-2D?

8 A. Yes.

9 Q. What is that?

10 A. That's a skull.

11 Q. Now, sir, do you have any specific recollection of when the  
12 skull was found? Do you remember that day?

13 A. Well, yeah. My -- that particularly stands out because it  
14 really amazed me that it was almost a polished black.

15 Q. Had you ever seen anything like that before, sir?

16 A. Pardon?

17 Q. Had you ever seen that kind of coloring before to a skull?

18 A. No.

19 Q. And to what did you attribute the color? Why was it that  
20 color?

21 A. I'm guessing, I don't know, but I would say because it was  
22 in the mud or something like that.

23 Q. And do you recall who the diver was who found the skull,  
24 sir?

25 A. Pardon?

1 Q. Do you recall who the diver was who found the skull, sir?

2 A. Yes.

3 Q. Who was it?

4 A. It was -- I believe it was lieutenant -- as I recall, it  
5 was Lieutenant Stewart.

6 Q. And how did he first indicate to you that he had found  
7 anything?

8 A. He was out and when he came up, he waved to me and then he  
9 went like that, and I guess he was indicating that he had a  
10 skull there.

11 THE COURT: You may indicate for the record that he  
12 pointed to his skull while he was testifying on this matter.

13 MR. GIBSON: Thank you, Your Honor. Indicating for  
14 the record pointing to his skull with the index finger.

15 THE COURT: Okay.

16 MR. GIBSON: Hand over his head.

17 THE COURT: The record so reflects.

18 BY MR. GIBSON:

19 Q. If we could take a look at the next photograph, G-2E. Do  
20 you recognize that, sir?

21 A. That appears to be the engine block.

22 Q. And is that basically how it looked when you all discovered  
23 it in 1964?

24 A. The what?

25 Q. Is that basically how it looked when you found it in 1964?

1 A. Yes.

2 Q. I'm going to show you a few more photographs. We're going  
3 to move to Government's Exhibit G-3. Beginning with G-3A. Can  
4 you take a look at the screen. Do you recognize that, sir?

5 A. Yes, I do.

6 Q. What's depicted in that photograph?

7 A. That's the engine block and then the skull.

8 Q. I also see -- is that logging chain in there?

9 A. Sir?

10 Q. Do you see a chain in the photograph, sir?

11 A. Do I see --

12 Q. Chain, links of chain?

13 A. Oh, yes.

14 Q. Going to G-3C, do you recognize that, sir?

15 A. Yes. That's another picture of the skull.

16 Q. Moving to G-3D, do you recognize that, sir?

17 A. Yes, I do. Another picture of the same.

18 Q. Okay. Now, I'd like to show you what's been marked as  
19 G-3E. Is that basically a photograph of the area in which you  
20 were conducting dive operations?

21 A. Yes, it does. I won't say it's the area, but it looks like  
22 the area.

23 Q. Showing you what's been marked as G-3F. Is that a  
24 photograph of the dive operations?

25 A. Yes, it is.

1 Q. Showing you what's been previously marked as 3G, G-3G. Do  
2 you recognize that?

3 A. Yes. It appears to be that they are lifting an engine  
4 block upwards.

5 Q. And showing you what's been marked as G-3H. Do you  
6 recognize that?

7 A. Yes, that's the engine block and chain.

8 Q. Now, if we could go to G-3K. Do you recognize that, sir?

9 A. I don't specifically recognize it, but it appears to be  
10 Parker's Landing area.

11 Q. And does that appear to contain a barge in the photograph  
12 and some boats?

13 A. Yes.

14 Q. Okay. Sir, I don't believe I have any other questions for  
15 you right now. Mr. Lucas is going to ask you some questions  
16 now.

17 A. All right.

18 MR. LUCAS: Just a second, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. LUCAS:

21 Q. How are you this morning?

22 A. I'm okay.

23 Q. Do you understand me?

24 A. Yes.

25 Q. My name is George Lucas, and I represent Mr. Seale. I've

1 got a couple of questions for you about the environment that  
2 you were working in in October of 1964. Were you familiar with  
3 what type of body of water that was?

4 A. Not until I got there and, as I remember, it's sort of a  
5 tributary off of the Mississippi River.

6 Q. It wasn't actually connected to the Mississippi River at  
7 that time of year, was it?

8 A. I'm not sure.

9 Q. Okay. Could you tell that the water was lower than it  
10 often was from the bank and from the characteristics of that  
11 body of water?

12 A. I didn't notice that.

13 Q. Okay. Now, you started searching that body of water and  
14 you searched it for five days. Is that correct?

15 A. That's correct.

16 Q. And during those five days, I believe at one time you said  
17 some cattle came across the river?

18 A. Repeat.

19 Q. Some cattle came across the river?

20 A. Some cattle, yes.

21 Q. Was there a point in the river that was shallow enough for  
22 those cattle to come across?

23 A. I don't know. I mean, they came across where we were, and  
24 I know what that depth was. If they was any shallower, I don't  
25 know.

1 Q. Did they swim across?

2 A. They swam across.

3 Q. And I guess you said that caused problems because it  
4 muddied the water, or what was --

5 A. Well, not really, because the water, the minute you put a  
6 diver in the water, the water gets muddy. It was just an  
7 inconvenience. We had to quit diving.

8 Q. Okay. Now, you said in your report that they -- that there  
9 was found a four and a half foot piece of rail connected to two  
10 wheels. Is that correct?

11 A. Yes.

12 Q. And it was very important that your report be accurate,  
13 wasn't it?

14 A. Repeat.

15 Q. You endeavored to make your report as accurate as possible,  
16 didn't you?

17 A. Yes, it was.

18 Q. And in your report when you said that there was one  
19 four-feet piece -- four and a half foot piece of rail connected  
20 to two wheels, that's what you found. Is that correct?

21 A. That's right.

22 Q. Okay. And if it had been two two-foot pieces of rail  
23 connected to wheels, that's what you would have put in your  
24 report?

25 A. Yes. And you have to remember I'm saying this from memory.

1 I have to read my report to know what I did.

2 Q. I understand, but your report said that you found two  
3 pieces of wheel -- two wheels connected to one four and a half  
4 foot piece of rail.

5 You also mentioned earlier when Mr. Gibson was questioning  
6 that the skull that you found seemed to be a polished black.

7 Is that correct?

8 A. That's what it appeared to be.

9 Q. Did that black clean off or was that --

10 A. I didn't touch it, and I don't know.

11 Q. You also mentioned that the place that you -- was  
12 productive where you actually found things was all down river  
13 or downstream from Parker's Landing?

14 A. Yes.

15 Q. Was there a current in the river at that time of year in  
16 October?

17 A. It wasn't -- couldn't detect any current.

18 Q. But you could tell that during periods of high water that  
19 there was, in fact, a current?

20 A. There was a high watermark, but we didn't pay much  
21 attention to that.

22 Q. And I presume from what you're saying, the Mississippi  
23 River wouldn't be a very good place to do any recreational  
24 diving, would it?

25 A. No.

1 Q. Can't see much in there?

2 A. Can't see anything.

3 Q. And you have no idea how all of those objects got into that  
4 body of water?

5 A. No, I didn't.

6 Q. You have no idea what happened on May 2nd, 1964?

7 A. No.

8 MR. LUCAS: Thank you so much.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. GIBSON:

12 Q. Sir, if I could, I'd like to go back to G-1A, your report,  
13 if I could, at page 3 at the October 30th entry.

14 A. Okay.

15 Q. And you tell me if I'm reading the third sentence in that  
16 paragraph correctly. "On the fifth pass, Chief Martin and  
17 Chief Bends recovered two pieces of railroad track." Did I  
18 read that correctly?

19 A. Yes.

20 Q. And that's what you wrote down?

21 A. What?

22 Q. That's what you wrote down in your report. Correct?

23 A. Yes.

24 Q. Okay. Now, if we could take a look at G-1C, please, the  
25 diagram that is going to appear on your screen. Now, as

1 indicated on the diagram, one side of the old Mississippi is  
2 Louisiana. Is that correct?

3 A. One side is what?

4 Q. Louisiana?

5 A. Yes.

6 MR. LUCAS: Objection, Your Honor. This isn't proper  
7 redirect. I didn't go into the state borders in my  
8 cross-examination.

9 THE COURT: I'll allow you further examination on this  
10 point if you wish. Go ahead.

11 BY MR. GIBSON:

12 Q. On the other side is the state of Mississippi. Is that  
13 correct?

14 A. Correct.

15 Q. And the items that you found, were they closer to the  
16 Louisiana side or to the Mississippi side as documented in the  
17 diagram?

18 A. It's closer to the upper area.

19 Q. Which would be Louisiana to the north?

20 A. Yes.

21 Q. Okay. Thank you, sir.

22 THE COURT: Mr. Lucas, I'll allow you  
23 cross-examination on this point.

24 MR. LUCAS: Thank you, Your Honor.

25 RECROSS-EXAMINATION

1 BY MR. LUCAS:

2 Q. You did not draw this diagram, did you?

3 A. No.

4 Q. You had no training in surveying or drawing of maps, do  
5 you?

6 A. No.

7 Q. You have no knowledge as to where the actual border between  
8 Mississippi and Louisiana is --

9 A. No.

10 Q. -- on that area?

11 A. No.

12 Q. The only basis you have of saying that either one of these  
13 borders is Mississippi or Louisiana is this diagram that you  
14 have right in front of you. Isn't that correct?

15 A. Repeat that, please.

16 Q. The only basis that you have for saying that this is  
17 Louisiana and this is Mississippi is the diagram that you have  
18 in front of you?

19 A. That's correct.

20 Q. So you're basing your testimony just off what Mr. Gibson  
21 has shown you?

22 A. We didn't have survey equipment out there, and I don't know  
23 exactly. Like I said, it was sort of a seaman's eye there.

24 MR. LUCAS: Thank you so much.

25 THE COURT: Any rereirect?

1 MR. GIBSON: No, Your Honor.

2 THE COURT: All right. You may step down.

3 MR. GIBSON: Your Honor, may I step away from the bar  
4 a minute, Your Honor?

5 THE COURT: You may.

6 MS. FITZGERALD: Your Honor, you may recall that I  
7 asked if we could have a few moments in between these  
8 witnesses.

9 THE COURT: You did. We'll be in recess for ten  
10 minutes. All rise.

11 (Jury Out)

12 (Recess)

13 MR. LAMPTON: Your Honor, before the jury comes in,  
14 let me ask counsel if they're going to object to some documents  
15 from the next witness.

16 THE COURT: You mean this witness?

17 MR. LAMPTON: No, sir, the next witness.

18 THE COURT: Well, then, take it up then subsequent  
19 because the jury is already about to come in now.

20 (Jury In)

21 THE COURT: You may be seated. We'll now swear the  
22 witness.

23 (Witness Sworn)

24 THE COURT: Before you start, hold it, we have to do  
25 one other matter. I told y'all I'd be giving y'all some

1 binders to you. We'll pass those out now. We're all ready.

2 Now you may begin.

3 OSCAR HUGHES,

4 Having first been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. FITZGERALD:

7 Q. Reverend Hughes, if you would, please, state your name and  
8 spell it for the court reporter.

9 A. Oscar Hughes. I live in Crosby, Mississippi.

10 Q. Is your last name spelled H-U --

11 A. H-U-G-H-E-S.

12 Q. And we brought you in before the jury came in so that we  
13 could practice seeing if that hearing device would assist you?

14 A. Yes.

15 Q. Is it working okay for you?

16 A. Yes.

17 Q. Will you let me know if at any time you can't hear me or  
18 don't understand a question?

19 A. Yes.

20 Q. And I'm going to need you to speak very slowly and clearly  
21 into that microphone. Okay?

22 A. Yes.

23 Q. Sir, are you, in fact, a reverend?

24 A. Beg your pardon?

25 Q. Are you a preacher?

1 A. No.

2 Q. Have you been a preacher?

3 A. No.

4 Q. You've never been a preacher?

5 A. No.

6 Q. Okay. Did you know Preacher Briggs?

7 A. Yes.

8 Q. Tell me about how you came to know Preacher Briggs.

9 A. I came to first -- my first time of knowing him was before  
10 he went into the Army in the year of 1941.

11 Q. When I say "Preacher Briggs," what was Preacher Briggs'  
12 first name?

13 A. Clyde.

14 Q. You first met Clyde Briggs in 19 --

15 A. I didn't meet him. I just saw him then, but I met him  
16 personally after he came out of the service and that was long  
17 about 1946, somewhere in that year.

18 Q. And before I jump into that, I actually want to hear a  
19 little bit more about you. Where are you from?

20 A. Crosby, Mississippi.

21 Q. How long have you lived there?

22 A. Since 1935.

23 Q. And are you employed?

24 A. Retired.

25 Q. What did you do before you were retired?

1 A. I was a sawmill employee for Crosby Lumber and  
2 Manufacturing Company. From that I worked for the Hood Lumber  
3 Company. I was sawmill most of my life.

4 Q. You indicated that you became -- or you became acquainted  
5 with Reverend Briggs --

6 A. By visiting churches by Franklin County and Wilkinson  
7 County. He was with Franklin County, and I started visiting  
8 churches. That's when he started -- went into the ministry,  
9 and that's when I got more acquainted with him after those  
10 years.

11 Q. Did you become close friends with Reverend Briggs?

12 A. Yes, very close with him.

13 Q. And did he -- did you attend a church?

14 A. Yes.

15 Q. Where was your church?

16 A. My church is Union Baptist Church in Crosby, but I was  
17 sitting in church with him at the Roxie First Baptist Church.

18 Q. Do you know where Reverend Briggs preached?

19 A. Beg your pardon?

20 Q. Where did Reverend Briggs preach?

21 A. He preached at that church.

22 Q. At which church?

23 A. Roxie Baptist Church, Crosby Union Baptist Church, Sweet  
24 Home Baptist Church, and he also preached at Centreville  
25 Baptist Church and from one church to another to preach at.

1 Q. Can you tell me how that worked, how he managed to preach  
2 at all of these different churches?

3 A. Well, small congregations and not much finance, and he was  
4 a preacher at one church one Sunday and go to the next one the  
5 next Sunday. So he was there at our church on the fourth  
6 Sunday.

7 Q. Are you, in fact, a deacon at the Crosby Union Baptist  
8 Church?

9 A. Yes.

10 Q. How long have you been a deacon there?

11 A. Since 1947, January 1947.

12 Q. And do you remember what year Preacher Briggs began  
13 preaching at the Crosby Union Baptist Church?

14 A. 1953.

15 Q. Do you know when Reverend Briggs passed away?

16 A. January 1965.

17 Q. I'm going to ask you some questions about a Saturday  
18 afternoon in the summer of 1964. Do you recall a Saturday  
19 afternoon in the summer of 1964 when Reverend Briggs came to  
20 visit you?

21 A. Yes.

22 Q. Can you tell me about that.

23 A. Well, we were sitting down in the living room just talking  
24 on Saturday evening. Finally somebody knocked on the door. At  
25 that time, we didn't keep doors locked, so I just said, "Come

1 in."

2 Q. Who came in?

3 A. It was Kirby Schell.

4 Q. Who is Kirby Schell?

5 A. He used to be sheriff of Franklin County. He is deceased  
6 now. But --

7 Q. At the time that he came to your house --

8 A. At the time he came to my house, he wasn't the sheriff  
9 then. I think he -- I think he was deputy. He was either  
10 deputy or he was the game warden. He was one or the other.  
11 But that's who came in.

12 Q. On the day that he came to your house --

13 A. When he came in the house.

14 Q. -- was he a law enforcement officer?

15 A. If my memory serves me right, he was.

16 Q. And he came to your home?

17 A. Yeah, he knocked on the door and I told him to come in and  
18 he came in and he spoke and he said, "We want to see you in  
19 Roxie, Clyde," that's what he said. He said, "Now?" He said,  
20 "Yeah, we want to see you right now." And he got up and come  
21 out. When Reverend Briggs gets up and come out of the house, I  
22 gets up and come out on the porch too, and it was highway  
23 patrolman cars sitting in my driveway.

24 Q. Was it a marked highway patrol car sitting in your  
25 driveway?

1 A. Marked highway patrol car.

2 Q. Did you see if there was any law enforcement officer in  
3 that highway patrol car?

4 A. Nobody -- that's all that was sitting in the car.

5 Q. I'm sorry. I didn't understand you. Can you repeat that.

6 A. I said it was just nobody in that car but the highway  
7 patrolman.

8 Q. So there was a highway patrol officer in the car?

9 A. There was highway patrol.

10 Q. And Kirby Schell, the law enforcement officer that came  
11 into your home, is he a white guy or a black guy?

12 A. Beg your pardon?

13 Q. Was he a white guy or a black guy?

14 A. White.

15 Q. What about the highway patrolman that was sitting in the  
16 marked patrol car in your driveway?

17 A. White.

18 Q. Was there anybody else with them that you saw at that time?

19 A. No.

20 Q. And you indicated that Mr. Schell told Reverend Briggs  
21 what?

22 A. He told him, said, "You just come on in your car. You  
23 drive your car and come on." So they left.

24 Q. Where did he tell him he wanted him to go?

25 A. In Roxie, Roxie. He told him when he walked in the house,

1 he said, "We want to see you in Roxie." That's what he told  
2 him.

3 Q. Did Reverend Briggs leave?

4 A. Yeah.

5 Q. Was there something about this exchange that seemed odd to  
6 you?

7 A. Well, not knowing what it was and like things was going on.  
8 After they left, I gets in my car and I drive on to Roxie  
9 shortly after that.

10 Q. When you say "things were going on," what do you mean by  
11 that?

12 A. Well, they was having the racial riots and so forth and  
13 things like that were going on.

14 Q. Were you concerned for Reverend Briggs' safety?

15 A. Yes, I was.

16 Q. What did you do?

17 A. I wanted to see what did they want him for because they  
18 wanted to see him, so I gets in my car and I drives to his  
19 house in Roxie.

20 Q. Can you tell me about how far away your home in Crosby was  
21 from the Roxie First Baptist Church?

22 A. I would say not over 20 miles.

23 Q. And how long did it take to go from your home in Crosby to  
24 the Roxie First Baptist Church by car back in 1964?

25 A. Twenty or 25 minutes.

1 Q. Did you make that drive?

2 A. Yes, I made that drive.

3 Q. Did you go to the Roxie First Baptist Church?

4 A. I went there after. I went to his house first.

5 Q. Did you find him there?

6 A. No, he wasn't at home. I asked his wife and she said he  
7 was at the church. When I stopped at the church, he had done  
8 been to the church and gone, but his brother was there working  
9 on a lock on the door. And I asked him what was the matter,  
10 and he said, "It's rumor out that they are going to do  
11 something to his church, and they told us to show up to the  
12 church and secure it." He was working on the lock. I left  
13 then and I went on to Natchez and I came back and I didn't see  
14 him anymore until the next day, and he said it was a rumor out  
15 that some things was going on at the church and the church was  
16 going to be set afire or burned or something. That's where it  
17 was left at. I questioned no more about it after that.

18 Q. Okay. Did you know Charles Moore?

19 A. No.

20 Q. Did you know Henry Dee?

21 A. No.

22 Q. Do you know Charles Edwards?

23 A. No.

24 Q. Have you ever had a conversation with a man named Charles  
25 Edwards --

1 A. No.

2 Q. -- about a search that happened at the Roxie First Baptist  
3 Church on a Saturday afternoon in 1964?

4 MR. LUCAS: Objection to leading, Your Honor.

5 THE COURT: Overruled.

6 BY MS. FITZGERALD:

7 Q. Have you ever had a conversation ever with a man named  
8 Charles Edwards about a search at the Roxie First Baptist  
9 Church --

10 A. No.

11 Q. -- that occurred on a Saturday in 1964?

12 A. No.

13 MS. FITZGERALD: Can I have just one moment, Your  
14 Honor?

15 (Short Pause)

16 BY MS. FITZGERALD:

17 Q. Back in the 1960s, did anybody ever come to talk to you  
18 about what you might know about the Roxie First Baptist Church  
19 being searched on a Saturday afternoon in 1964?

20 MR. LUCAS: Your Honor, I've got to object to this  
21 leading. He's never said one word --

22 THE COURT: I understand. Don't lead. Rephrase your  
23 question.

24 BY MS. FITZGERALD:

25 Q. Has any law enforcement officer -- have you ever had a law

1 enforcement officer come to talk to you back in the 1960s about  
2 what we've been talking about here today?

3 A. No.

4 MS. FITZGERALD: I don't have anything further. Thank  
5 you, Your Honor.

6 THE COURT: Cross-examination.

7 MR. LUCAS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. LUCAS:

10 Q. Good morning, Mr. Hughes. How are you today?

11 A. Fine.

12 Q. Can you hear me all right?

13 A. Yes.

14 Q. Now, you said that you were visiting -- Reverend Briggs was  
15 visiting at your home at the time that these law enforcement  
16 officers came and asked him to come to Roxie. Is that correct?

17 A. He was visiting at my house.

18 Q. Right. In Crosby?

19 A. In Crosby.

20 Q. And after you visited -- after the visit -- after he left,  
21 you became concerned and went to the church in Roxie. Is that  
22 right?

23 A. No. I went to his house first.

24 Q. Went to his house and he wasn't at his house and then you  
25 went to the church?

1 A. Right. Yes.

2 Q. I'm sorry?

3 A. I said yes, I went to the church by myself.

4 Q. When you got to the church, his brother was there changing  
5 the locks on the church?

6 A. Yeah, he was working on the locks on the -- one of the back  
7 doors of the church.

8 Q. And his brother told you that the reason he was doing that  
9 is because they had been informed that there might be a threat  
10 against the church?

11 A. Yes, it was a rumor. That's what he said, yes.

12 Q. And the next day, you saw Reverend Briggs?

13 A. No. I didn't see him the next day.

14 Q. Okay. I'm sorry. I misunderstood you.

15 A. I said no, I didn't see him the next day. I saw him after  
16 that. I don't know if it was the next day, but I know I didn't  
17 see him the next day because the next day was on a Sunday. I  
18 didn't see him that Sunday. He didn't come to Crosby on that  
19 day. But when I did talk with him again, that's what he told  
20 me it was. He told me the same thing his brother told me.

21 Q. He told you that the reason that the law enforcement had  
22 come to see him was because they thought that there was a  
23 threat against that church?

24 A. Yeah, the particular church.

25 Q. And you knew Reverend Briggs very well, did you not?

1 A. Yes.

2 Q. Did you -- were you familiar with Reverend Briggs'  
3 membership in a group called The Deacons for Defense?

4 A. No.

5 Q. Were you a member of that organization?

6 A. No.

7 MR. LUCAS: If I may have a moment, Your Honor.

8 (Short Pause)

9 MR. LUCAS: Nothing else, Your Honor. Thank you.

10 THE COURT: Redirect?

11 MS. FITZGERALD: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. FITZGERALD:

14 Q. You were just asked a question about what Reverend Briggs  
15 conveyed to you. What Reverend Briggs told you was that law  
16 enforcement officers --

17 MR. LUCAS: Objection, Your Honor, to leading.

18 THE COURT: Don't lead. You're leading.

19 BY MS. FITZGERALD:

20 Q. In response to the question that defense counsel asked you,  
21 did Reverend Briggs tell you that he himself knew the reason  
22 for the search or --

23 MR. LUCAS: Objection, Your Honor. May we approach?

24 THE COURT: No.

25 MS. FITZGERALD: May I continue?

1                   THE COURT: Ask your question.

2 BY MS. FITZGERALD:

3 Q. Did he tell you whether or not he had personal knowledge of  
4 why the search was conducted or whether he was told something  
5 by the law enforcement officers?

6                   MR. LUCAS: Objection once again.

7                   THE COURT: Hold it before you answer the question. I  
8 need to excuse the jury.

9                   (Jury Out)

10                  THE COURT: Do I need to excuse the witness while we  
11 discuss this matter?

12                  MS. FITZGERALD: That's probably best, Your Honor.

13                  THE COURT: Okay.

14                  MS. FITZGERALD: We'll bring you right back,  
15 Mr. Hughes.

16                  (Short Pause)

17                  THE COURT: Okay. Now explain what's going on.

18                  MS. FITZGERALD: Your Honor, I'm simply trying to  
19 clarify that the information that he got from Reverend Briggs  
20 wasn't from Reverend Briggs' personal knowledge. Reverend  
21 Briggs was told by the law enforcement officers, the government  
22 will contend later in argument falsely, that the reason for the  
23 church search was because of bombs, that they tried to make  
24 this appear as though it was a benevolent search. In fact,  
25 they were conducting a search that Charles Edwards has already

1 testified to and they were looking for the guns, and this  
2 corroborates his testimony. That's where I'm going.

3 THE COURT: I see. What question do you propose to  
4 ask him?

5 MS. FITZGERALD: I wanted to just simply ask him  
6 whether or not Reverend Briggs told him he knew this of his own  
7 knowledge or whether this was something that was told to him by  
8 the law enforcement officers. That's exactly what counsel  
9 inquired of.

10 THE COURT: What's your objection?

11 MR. LUCAS: Your Honor, there has never been one word  
12 out of this witness' mouth about a search. The only thing this  
13 witness has testified to is that Reverend Briggs was at his  
14 house, law enforcement came and asked him to return to Roxie,  
15 went back -- he went to Roxie with those law enforcement and  
16 then later on this witness went down and his brother was  
17 changing the locks on the church and said there was a danger,  
18 and later Reverend Briggs said that there was some danger to  
19 the church. He never has said one word, not in his 302 nor in  
20 his testimony, about there being a search, about his knowledge  
21 of a search. The only time a search has been mentioned has  
22 been Ms. Fitzgerald.

23 THE COURT: Ms. Fitzgerald, what's the question you're  
24 going to ask him again?

25 MS. FITZGERALD: Counsel is correct, and I apologize.

1 I have misphrased the question. I will phrase it in terms of  
2 did Reverend Briggs indicate to you that he had personal  
3 knowledge of this purported bomb threat or was that something  
4 that was told to him by law enforcement officers.

5 THE COURT: Okay.

6 MR. LUCAS: To that question I will have no objection,  
7 Your Honor.

8 THE COURT: Okay, then.

9 MS. FITZGERALD: It's invited if there's an objection  
10 as to hearsay.

11 THE COURT: Okay. Let's bring the jury in. First of  
12 all, bring the witness in.

13 MS. FITZGERALD: I apologize to the court and to  
14 counsel. I did misphrase the question.

15 THE COURT: Well, he is correct that the witness never  
16 said anything about a search. You can bring the witness back  
17 in and the jury.

18 (Jury In)

19 THE COURT: You may be seated. Counsel.

20 MS. FITZGERALD: Thank you, Your Honor.

21 BY MS. FITZGERALD:

22 Q. Mr. Hughes?

23 A. Yes.

24 Q. When you spoke with Reverend Briggs, did he indicate to you  
25 whether he had personal knowledge that there was this purported

1 threat to the church or whether that was something that was  
2 told to him by the law enforcement officers?

3 A. It was told to him by the law enforcement officers.

4 MS. FITZGERALD: Nothing further. Thank you.

5 THE COURT: Either side anticipate recalling this  
6 witness?

7 MS. FITZGERALD: No, Your Honor.

8 MR. LUCAS: No, Your Honor.

9 THE COURT: You may step down and be finally excused.  
10 Call your next witness.

11 MR. LAMPTON: Your Honor, before I do that, from  
12 talking with defense counsel, I believe the court is going to  
13 have to rule on a matter of evidence preliminarily, and I think  
14 you need to do that outside the presence of the jury.

15 MS. NESTER: It is going to require a predicate from  
16 the witness, so, I mean, I don't understand how the court is  
17 going to rule on that before the witness lays the predicate.

18 THE COURT: I don't even know what y'all are talking  
19 about.

20 MS. NESTER: It's a document he's trying to introduce.  
21 It's going to require a predicate. I don't know how we could  
22 do it now. He's going to have to do it after he lays the  
23 predicate and then ask for the court --

24 THE COURT: Is there objection to a document based  
25 upon what you presume to be a lack of a predicate?

1 MS. NESTER: No.

2 THE COURT: Then I guess I can't dance around it  
3 without having to excuse you all. Let me excuse you. This  
4 won't take but a moment.

5 (Jury Out)

6 THE COURT: Mr. Lampton?

7 MR. LAMPTON: Yes, sir, Your Honor. The government is  
8 going to offer into evidence a journal of Reverend Clyde Briggs  
9 that we contend is in his handwriting. We contend that it is  
10 over 20 years old, that it qualifies for admission into  
11 evidence as an ancient document, and I believe to do that I'm  
12 going to have to lay a predicate. If the court decides that  
13 that document is not admissible, then, frankly, this witness  
14 was seven years old at the time of the deaths of Mr. Moore and  
15 Mr. Dees, and I would not call him as a witness. So but for  
16 the -- I'll be happy to do it in front of the jury, but I think  
17 the court would probably want to make that ruling first.

18 And then also on the same page, there's some writing,  
19 there's some information that doesn't exactly concern the  
20 search of the church. I contend that that information is  
21 admissible. I think the court is going to need to rule on the  
22 admissibility of that portion of information that's on the same  
23 page. So I think the court is going to have to make a couple  
24 of rulings, and I don't think I need to be displaying this to  
25 the jury or anything until the court has ruled that it is, in

1 fact, admissible.

2 THE COURT: Okay. Bring in the witness and let's see  
3 what the --

4 MR. LAMPTON: Excuse me. John Briggs.

5 JOHN BRIGGS,

6 Having first been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LAMPTON:

9 Q. Good morning.

10 A. Good morning, sir.

11 Q. And would you, please, state your name for the judge.

12 A. Yes. My name is John Ellis Briggs.

13 Q. And who was your father?

14 A. My father is Reverend Clyde Bennie Briggs.

15 Q. And how old are you?

16 A. I am 49.

17 Q. Is your father alive or is he deceased at this time?

18 A. My father is deceased at '65.

19 Q. Did you have an occasion to find a journal that you know to  
20 have been prepared by your father before his death?

21 A. Yes, sir.

22 Q. And do you have that journal with you today?

23 A. Yes, sir, I do.

24 MR. LAMPTON: Your Honor, may --

25 BY MR. LAMPTON:

1 Q. Do you have that journal with you?

2 A. I have it, yes, sir.

3 MR. LAMPTON: Your Honor, may I provide the court with  
4 the original journal because I believe that's one thing the  
5 court can consider, is the appearance of the journal, whether  
6 it matches the assertion that it is over 20 years of age.

7 THE COURT: Okay.

8 MS. NESTER: I've never seen it, Judge. I'd like to  
9 see it too, please.

10 MR. LAMPTON: Okay.

11 THE COURT: Show it to defense counsel.

12 MS. NESTER: I'm sorry. I did see this in  
13 Mr. Lampton's office. I apologize. I thought this was a  
14 different one.

15 (Short Pause)

16 MS. NESTER: Thank you, Your Honor.

17 MR. LAMPTON: Your Honor, could I direct the court's  
18 attention to page 92 and 93. That's the only pages that we  
19 contend have any information that is relevant to this case.  
20 The other information may help authenticate it, but those pages  
21 contain information that we think is relevant.

22 THE COURT: Okay. You may question.

23 BY MR. LAMPTON:

24 Q. Are you familiar with the document that you brought to  
25 court and the judge has had a chance to review?

1 A. Yes, sir, I am.

2 Q. And for how long have you been familiar with that journal?

3 A. With this journal? Since 1984, approximately.

4 Q. And we're talking about Exhibit 32 -- G-32A. And you said  
5 you first knew of its existence when?

6 A. I first knew of its existence in '81, '82, but my first  
7 time actually seeing it was in '84.

8 Q. And does that document contain handwriting of your  
9 father's, Reverend Clyde Briggs?

10 A. Yes, sir, to the best of my knowledge.

11 Q. And how did you obtain the knowledge of your father's  
12 handwriting?

13 A. Well, from all the journals and other things that I have,  
14 and I also have a certificate of service on his World War II  
15 service. I have a signature with his -- well, his service  
16 record with his signature on the back.

17 Q. Do you have that document with you?

18 A. Yes, I have a copy of it.

19 MR. LAMPTON: And, Your Honor, that is Exhibit 32D --  
20 G-32D. May I approach the witness?

21 THE COURT: You may.

22 MR. LAMPTON: Your Honor, may I tender that document  
23 to the -- first of all, I'd ask that it be admitted as an  
24 exhibit to his testimony for the purpose of this hearing and  
25 then allow the court to examine the signature on the document.

1 MS. NESTER: I think that it needs to be marked for ID  
2 under those circumstances. Otherwise, it's going to go back to  
3 the jury. I would not object to it being marked for  
4 identification for purposes of this hearing.

5 THE COURT: That's fine, ID is fine. All right. Go  
6 ahead.

7 MR. LAMPTON: Can it be tendered to the court?

8 THE COURT: G-32D.

9 (Exhibit G-32D for ID marked)

10 BY MR. LAMPTON:

11 Q. While you knew of the journal's existence, had you ever  
12 read the entire journal or examined its contents?

13 A. No, I haven't until I guess maybe '89 or '90, first time I  
14 really went through and read the entire thing, yes.

15 Q. And when, if ever, did that journal attract your attention  
16 or when, if ever, did you have a chance to look at that journal  
17 or think that it might be significant to the events of May 2nd  
18 of 1964?

19 A. Well, the most significance is when someone who I think is  
20 from your office who wanted to know whether or not I was  
21 familiar with a searching of the church and brought some  
22 encyclopedias, and I went to look for a search warrant for the  
23 church being searched and in looking for the search warrant, I  
24 ran back across this document and other documents that had been  
25 placed in a safe place.

1 Q. And when you say those documents that you looked at, and  
2 particularly that journal, that was in a safe place, it was in  
3 a safe place where?

4 A. At my mother and father's home in the loft there at the  
5 house.

6 Q. And how long had that been your mother and father's home?

7 A. All our life that I know. At least -- I'm 49, so at least  
8 50, 50 something years, I guess.

9 Q. Your father was living in the home where that journal was  
10 found in 1964?

11 A. Yes, sir. Yes.

12 Q. It was found in the home that your father occupied?

13 A. Yes, sir.

14 Q. And it was found with what other kind of documents and what  
15 other kind of papers?

16 A. Newspaper clippings, journals from my father's church  
17 records, letters, cards, military records.

18 Q. All of those family documents either written by your father  
19 or kept by your father?

20 A. Yes, sir, exactly.

21 Q. Is there any writing in that journal other than your  
22 father's handwriting?

23 A. Yes, sir, there is.

24 Q. And whose writing is that?

25 A. In '89, I had an entry in it, and also I had a radio

1 interview in January of this year, and I have had some notes  
2 that I have put in for a radio interview also.

3 Q. Are any of those notes on pages 92 or 93?

4 A. No, sir.

5 Q. And is there anything about that journal or about where it  
6 was found or anything that you know that would make you believe  
7 that this journal was not prepared by your father in 1964 and  
8 is not in his handwriting?

9 A. Nothing that I know of. I think it's my father's.

10 Q. Is it unusual for your father to refer to himself in his  
11 writings in the third person as he did in this journal entry?

12 A. Well, in the journal, he quite a bit refers to himself in  
13 the third person.

14 Q. That's not unusual, is it?

15 A. No, sir, not from this particular journal, no, sir.

16 MR. LAMPTON: Your Honor, at this time, I would tender  
17 the witness for examination before I offer the document.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MS. NESTER:

21 Q. Good morning.

22 A. Good morning, ma'am.

23 Q. I just want to follow up a little bit with you on the  
24 history of this document. Okay?

25 A. Yes.

1 Q. You said that the first time you became aware of this  
2 document was in 1984?

3 A. I became aware of it in '81 and '82, but the first time I  
4 seen it was in '84 after the funeral of my oldest brother.

5 Q. Let's go back, then. You said your father passed away in  
6 '65?

7 A. Yes.

8 Q. Where was this journal from 1965 until the early '80s?

9 A. I haven't the slightest idea. I'm under the assumption  
10 that perhaps my older brother had it or someone else in the  
11 family had it.

12 Q. You don't know where it was for those 20 years?

13 A. No, sir -- no, ma'am, I don't know.

14 Q. You don't know whose hands it was in?

15 A. I can't say for sure as to '84. After '84, it was in the  
16 hands of my other brother, Major Clyde Briggs.

17 Q. Is your mother still living?

18 A. No, ma'am.

19 Q. When did she pass away?

20 A. June of '87.

21 Q. So when's -- the first time you became aware that it  
22 physically existed was someone in your family told you about  
23 it?

24 A. Yes, exactly. My mother.

25 Q. Your mother?

1 A. And, like I say, in '81. I was on my way to Europe in '81.  
2 I think that's when she told me about not just the journal but  
3 other writings, because I have always been inquisitive about my  
4 father. I was very little when he passed. I've always been  
5 very inquisitive about his life, and in one of our  
6 conversations, I was told that he did leave some writings, yes.

7 Q. And the first time you physically saw the journal was?

8 A. '84, yes.

9 Q. '84. And where did you see it?

10 A. At my mom and dad's house.

11 Q. But you can't testify that it was there the 20 years in  
12 between?

13 A. I can't testify to that, no, I can't.

14 Q. Also since that time after you have seen it, what did you  
15 do with it?

16 A. I was able to reason with -- read some of the entries in  
17 '84 and, like I say, my other brother had it, and I came back  
18 down from Washington state in '97 and my brother had taken ill  
19 and basically at that time his prognosis was one to where he  
20 thought that he should let me know what was going on with  
21 everything.

22 Q. So from '84 to '97, the journal was in the possession of  
23 your brother possibly?

24 A. That's to the best of my knowledge.

25 Q. But not you?

1 A. Right, exactly.

2 Q. All right. Then in '97 when your brother became ill, he  
3 gave the document to you?

4 A. Well, he allowed me to take possession. He told me to take  
5 care of it. Exactly.

6 Q. So has it been in your custody consistently since 1997?

7 A. It hasn't been in my custody. It's been at my mother and  
8 father's house until --

9 Q. Is that where you live?

10 A. Oh, no, no. No, ma'am.

11 Q. So you didn't have it then either. You just took it to  
12 your mom and dad's house?

13 A. Yes, I stored it at the attic there at my mom's and dad's  
14 house.

15 Q. Who was living there at the time?

16 A. My brother Charles still lives there.

17 Q. So did it stay there in the attic for a period of time?

18 A. Yes, ma'am. I guess from -- I guess maybe the early 2000,  
19 2001 or so is when it was -- my brother died in 2002, so  
20 actually he had asked me to take care of it in '97, but he  
21 passed away in 2002, but he was still in possession of it. He  
22 had let me know to look after it.

23 Q. So did you take control of it in 2002?

24 A. Yes, ma'am. But I did not take it out of the house. It  
25 was still there in the attic at their house.

1 Q. And you weren't living there then either?

2 A. No, ma'am.

3 Q. You can't testify if it was altered in any way or what  
4 anybody did when you didn't have it. Right?

5 A. Oh, no, ma'am, I can't testify to that.

6 Q. Okay. And then at some point, have you provided copies to  
7 people involved in this case?

8 A. Yes, ma'am.

9 Q. All right. And also I believe you were interviewed by the  
10 Jackson Free Press. Is that right?

11 A. Yes, ma'am.

12 Q. Did you allow them to have possession of that document?

13 A. To make copies of it, yes.

14 Q. How long did they have it?

15 A. Maybe ten minutes or 15 minutes. Actually, they just took  
16 photographs of it, I think.

17 Q. So you didn't turn it over to them. You were there when  
18 they had it?

19 A. I turned it over to them, they went and made some copies of  
20 it, took pictures of it.

21 Q. They gave it back to you?

22 A. Yes.

23 Q. Any other media that you shared that document with?

24 A. A radio station in Gulfport, WJZD.

25 Q. And did they take possession of it at any point?

1 A. No, ma'am, just copied it.

2 Q. Now, I notice that you said that to the best of your  
3 knowledge that's your dad's handwriting?

4 A. Yes, ma'am.

5 Q. Now, the handwriting throughout, there's no signature of .  
6 your father anywhere in that journal, is there?

7 A. In this particular journal, I don't think there is.

8 Q. As a matter of fact, nowhere in the journal is it written  
9 from the first person, in other words, like myself, it always  
10 talks about the preacher being someone else, doesn't it,  
11 throughout the entire journal?

12 A. In most of the spots, yes, ma'am. I think there may be  
13 some instances where he may have some, like, names of members  
14 of his church or about some different things that was going on  
15 in the church and activities with the church.

16 Q. At no point in that journal is it ever written from the  
17 perspective of the preacher himself?

18 A. From the first person, no, ma'am, not that I'm aware of.

19 Q. He had a church secretary, didn't he, that worked with him  
20 fairly closely?

21 A. Yes, he had a secretary. I'm not sure how closely they  
22 worked.

23 Q. Do you know whether he or his secretary was in charge of  
24 that journal?

25 A. I don't know.

1 Q. And have you ever looked at that secretary's handwriting to  
2 compare?

3 A. No, I haven't.

4 Q. All right. Have you ever had any training in handwriting  
5 comparison?

6 A. No, ma'am.

7 Q. And I think you said you relied on his signature on his  
8 certificate of service but, again, there's no signature in this  
9 journal. Correct?

10 A. Correct.

11 Q. And you personally have altered the journal?

12 A. I have put entries in it, yes, ma'am.

13 Q. At one place in the journal, there's a writing of the year  
14 1964. Are you able to say under oath by just looking at those  
15 numbers that your father wrote those numbers in that journal?

16 A. Not under oath. I didn't witness him writing it, no,  
17 ma'am.

18 Q. Can you even identify that those are how he wrote his  
19 numbers? Do you know that your father wrote 1964 in that  
20 journal?

21 A. I don't know because I haven't considered his -- the way he  
22 wrote numbers.

23 Q. Okay. Also I think you said you used that other journal to  
24 kind of compare the writing. Is that right?

25 A. Yes, there's another journal that is more of like the

1 records of --

2 Q. Of the church activities?

3 A. Yes, ma'am.

4 Q. And is your father's signature anywhere in that journal?

5 A. I think it is. I'm not sure. I can't say for sure right  
6 now, but I think there's some notes in there because my father  
7 had done some work with education also. I think there's some  
8 entries with -- maybe something with his name on it in there.

9 Q. All right. But is it possible that the same person who did  
10 both journals -- because the two journals were kept in the  
11 church. Is that right?

12 A. Well, I don't know how long they were kept in the church.

13 Q. Let me ask it this way: I asked that wrong. I apologize.  
14 The second journal, the one you used for comparison is also  
15 related to church activities?

16 A. Yes, ma'am.

17 Q. So it would make sense that it was also kept and maintained  
18 at the church at some point?

19 A. I guess. I can't say. I don't know whether it was  
20 maintained at the church or with my father or who it was  
21 maintained with.

22 Q. But it was all related to church activities?

23 A. Yes, ma'am.

24 Q. So it's very possible that the same person did both  
25 journals?

1 A. Could be possible, yes. Possible, yes.

2 MS. NESTER: That's all I have. Thank you, Your  
3 Honor. Thank you.

4 MR. LAMPTON: Your Honor, I'd like --

5 MS. FITZGERALD: Could we turn the Elmo on for just a  
6 moment, Your Honor?

7 THE COURT: All right.

8 MR. LAMPTON: For comparison purposes, if permissible,  
9 I'm going to show him his father's signature on his discharge  
10 certificate and his father's name or handwriting in the exhibit  
11 that I have tendered, page 93.

12 MS. NESTER: Your Honor, this witness was never  
13 identified by the government as an expert witness in  
14 handwriting analysis. If they are now trying to get him to  
15 perform a handwriting analysis, then they're acting outside of  
16 their expert designation. Obviously, the defense -- if we are  
17 to believe that they believed he has the training to compare  
18 handwriting, we would have also gotten a handwriting expert,  
19 but we were sure that they were not going to call a handwriting  
20 expert. We object to this entire line of questioning.

21 THE COURT: Okay. You may proceed.

22 REDIRECT EXAMINATION

23 BY MR. LAMPTON:

24 Q. Would you examine the monitor in front of you, please,  
25 Mr. Briggs.

1 A. Yes, sir.

2 Q. And can you see your father's signature on the discharge  
3 certificate?

4 A. Yes, sir.

5 Q. Right above his name in the journal?

6 A. Yes, sir. I see what you're saying, yes, sir.

7 Q. And do you see any differences between the Clyde Briggs in  
8 the discharge certificate and the Clyde Briggs on page 93 of  
9 that document?

10 A. From what I'm seeing here, there's a difference in the C,  
11 perhaps, in Clyde, and everything else seems to be the same.  
12 There may be a difference in the R on the certificate of  
13 service compared to the R in the journal but, otherwise,  
14 everything looks the same.

15 Q. Speak loud enough so the court can --

16 A. The C in Clyde, it looks like there may be some difference  
17 as far as there being a loop in the C, and on the Briggs, there  
18 looks like there may be a difference in the R.

19 Q. And I'm going to ask you to compare it to or just bring it  
20 to your attention on the bottom of page 93 is also the name  
21 Reverend Clyde Briggs and the discharge certificate is above it  
22 and just ask if you can -- being familiar with your father's  
23 handwriting, if you see similarities between or can you tell us  
24 that the signature on the discharge and the signature on this  
25 document was prepared by the same person?

1 A. Yes, sir, looks pretty identical to me.

2 THE COURT: Now, you're showing the signature of Clyde  
3 Briggs on the discharge paper?

4 MR. LAMPTON: Yes, sir.

5 THE COURT: And you're just imposing that to a Clyde  
6 Briggs which appears -- a written Clyde Briggs which appears on  
7 pages 93 and 94?

8 MR. LAMPTON: Yes, sir.

9 THE COURT: And on the pages 93-94 is where the writer  
10 uses -- refers to a Clyde Briggs and where the prosecution  
11 contends that he was merely describing himself in third person?

12 MR. LAMPTON: Yes, sir. That is correct.

13 THE COURT: Leave it there just for a moment.

14 (Short Pause)

15 THE COURT: Okay.

16 BY MR. LAMPTON:

17 Q. You were questioned whether or not this document may have  
18 been kept at the church where your father was a pastor, and I  
19 believe you said it might have been kept at the church. You  
20 didn't know?

21 A. I don't know, yes.

22 Q. But which church would it have been kept at?

23 A. That's a good question, sir. My father had five different  
24 churches. I don't know. I mean, it could have been at Roxie,  
25 it could have been at Crosby, it could have been at

1 Centreville, Doloroso, any of the five congregations that my  
2 father -- if it was kept at one of his churches.

3 Q. It would have been more reasonable for your father to have  
4 kept that journal where?

5 A. On his person or in his home, being that several references  
6 deal with the -- especially now that the journal deals with the  
7 different congregations, different membership and the different  
8 congregations.

9 Q. And when you talk about your brother having the journal,  
10 that's also the son of Reverend Briggs?

11 A. Yes.

12 Q. And he is now living or deceased?

13 A. My brother passed in 2002.

14 Q. Was it just this document that your brother gave you?

15 A. No, sir.

16 Q. I mean, he gave you --

17 A. A whole bunch of my daddy's papers. Like I say, I'm  
18 assuming that it was papers that was passed on from my mother  
19 after my first brother died.

20 Q. It was not just this journal, it was a stack of documents  
21 all dealing with either church or family matters of your  
22 father, Reverend Clyde Briggs?

23 A. Yes, sir.

24 Q. And is there anything that would make you believe that the  
25 writing on page 92 and 93 had been changed or altered or

1 modified at any time since your father passed away or since  
2 it's been in the custody of your family?

3 A. No, sir, nothing that I can notice of any change.

4 MR. LAMPTON: That's all I have, Your Honor.

5 THE COURT: I want you to read the journal entries on  
6 92 and 93.

7 THE WITNESS: 92 and 93?

8 THE COURT: Yes, the ones that the government has  
9 identified as pertaining to this case, read those.

10 THE WITNESS: Starting on page 92 or in the sequence  
11 that they were entered?

12 THE COURT: Mr. Lampton, what entries interests the  
13 government?

14 MR. LAMPTON: Yes, sir, if you would start on the top  
15 of page 93 and read there, the very top handwriting on page 93.

16 THE WITNESS: Yes, sir. Page 93 of a journal under  
17 the heading, "Things happened in 1964 in Franklin County. On  
18 Saturday May 2nd, state highway patrol and deputy sheriff Kirby  
19 Shell came to Roxie, Mississippi, to get pastor of the Roxie  
20 colored Baptist Church, Reverend Clyde Briggs, because they had  
21 been informed that a group of guns was hid in the church and  
22 some white men was going to bomb the church that night. No  
23 guns were found in the church, but the law officers advised the  
24 pastor to see to the church being locked when all leave the  
25 church."

1       The second entry says, "On Sunday night, May 24, Reverend  
2 Clyde Briggs was coming from church service at New Bethel  
3 Baptist Church east of Meadville, Mississippi, and when he got  
4 near Roxie, Mississippi, two carload of white men tried to stop  
5 him on the highway, but he would not stop. They followed him  
6 all the way home, and one of the men, Jack Davis, got out of  
7 the car and did a lot of big talk and told Reverend Briggs that  
8 the next time they tried to stop him he had better stop."

9       Last entry on page 93 with an arrow pointing over to page  
10 92 says, "On Monday, July 13," and it looks like a 13 has been  
11 written over the 12, "the body of two young Negro men was found  
12 in the Mississippi River. The men were Henry Dee and Charles  
13 Moore of Meadville, Mississippi. On that same night someone  
14 shot into the home of Reverend Clyde Briggs with a rifle." And  
15 pointing from that entry, like I said, over to page 92, that  
16 arrow points to an entry that says --

17 BY MR. LAMPTON:

18 Q. Just a moment, please.

19 A. Sorry.

20 Q. Go ahead, please.

21 A. That entry says, "Those two young men" --

22 Q. If you would, once again, start at the top of the page and  
23 work your way down.

24 A. On page 92, the first entry under 1964, it says, "On Sunday  
25 morning, June 21st, at dawn of day, they turned a young Negro

1 man out of Meadville jail and the Ku Klux Klan took charge of  
2 him and beat him unmercifully and left him for dead. The young  
3 man came to and made his escape. He left Franklin County or  
4 Mississippi." And then another entry says, referring to page  
5 93, "Those two young men had not been seen since the early part  
6 of May in Meadville, Mississippi."

7 Q. The reference to Crosby, Mississippi, do you know Oscar  
8 Hughes?

9 A. Yes, sir, Deacon Hughes, yes.

10 Q. And do you know where he lived in 1964?

11 A. In Crosby.

12 Q. And there was also in that journal a newspaper clipping?

13 A. Yes, sir, along with other clippings, yes, sir.

14 Q. And were any of those clippings relevant to the case  
15 involving the death of Charles Moore and Henry Dee?

16 A. Yes, sir. There's a clipping from, I think,  
17 November 6th or 7th under the headline of "Arrested for Torso  
18 Murders" and that clipping has a picture of Mr. Seale and  
19 Mr. Edwards.

20 Q. And is that picture inside the journal that Judge Wingate  
21 has -- I'm sorry.

22 A. Yes, it's here.

23 MR. LAMPTON: Your Honor, may I put that on the Elmo,  
24 please, so the court can see it?

25 THE COURT: I saw it earlier.

1 BY MR. LAMPTON:

2 Q. Was that clipping located inside that journal when you  
3 first looked at the journal?

4 A. Yes, sir. Like I said, with other clippings, yes.

5 Q. And the -- you removed the other clippings?

6 A. Yes, sir.

7 Q. But you allowed that clipping to remain?

8 A. Yes, sir.

9 Q. And at one point in time that clipping was stapled to page  
10 92?

11 A. 92, yes, sir.

12 Q. And who stapled that clipping to page 92?

13 A. I stapled that, yes.

14 Q. And then, I believe, last night that clipping was unstapled  
15 so it would be in the journal like it was when you first found  
16 it?

17 A. In the original way it was when I found it.

18 Q. And who unstapled it?

19 A. I took the staple off, yes, sir.

20 Q. And other than the writing of you and your father, on every  
21 page of that journal there's some initials and a date of, I  
22 believe, May 8th of this year?

23 A. I guess it was May the 18th.

24 Q. May 18th?

25 A. Yes, sir.

1 Q. And whose initials are those?

2 A. Those are my initials and also initial of an investigator  
3 who I turned the original document over to.

4 Q. And was that -- is that document today in the same  
5 condition as it was when you first saw it other than the  
6 initials that had been placed on it recently that appear on  
7 every page?

8 A. Yes, sir, it's the same compared to the copies that the  
9 investigator have asked me to make before I turned it over to  
10 you guys.

11 MR. LAMPTON: Nothing else, Your Honor.

12 THE COURT: All right. Ms. Nester?

13 MS. NESTER: Yes, sir, nothing further.

14 THE COURT: What's your position on this matter?

15 MS. NESTER: We still object to authenticity. The  
16 document was out of this witness' hands for decades, and  
17 certainly there's no chain of custody that can be testified to.  
18 It's been altered. He's not an expert in handwriting. For all  
19 of those reasons, we object to that document.

20 THE COURT: Do you have any case authority you'd like  
21 to share with the court?

22 MS. NESTER: Simply that the cases that's under the  
23 ancient documents provision. If you'll give me just a second.  
24 Just a minute, Your Honor.

25 (Short Pause)

1 MS. NESTER: The section that, I think, they are  
2 trying to get it under is 803(16), which is ancient documents,  
3 and even ancient documents authenticity is required to be  
4 proved first. "The failure of the party" -- "failure of the  
5 party to authenticate a purported ancient document means that  
6 its contents do not qualify for the hearsay exception." The  
7 case that is cited under the annotations to the rules, you have  
8 to show a three-part test, which is that the document in order  
9 to authenticate it, it has to be in a condition as to create no  
10 suspicion concerning its authenticity and that is no suspicion.  
11 It was in a place where it, if authentic, would likely be and  
12 that it has been in existence 20 years or more at the time that  
13 it is offered.

14 The case that -- that they cite there in a case called  
15 Kalamazoo River Study Group versus Menasha, M-E-N-A-S-H-A,  
16 Corporation, 228 F.3d 648 (6th Cir. 2000). A document which  
17 was purportedly prepared by the EPA was found in the files of  
18 another organization and evidence of EPA authorship was  
19 tentative. The court properly excluded it as lacking  
20 reliability. Even if the document is of the requisite age and  
21 meets authentication requirements, the judge can still exclude  
22 it if the possibility of prejudice or confusion outweighs any  
23 probative value.

24 We certainly recognize the probative value of the  
25 government's attempt to introduce it. But in this particular

1 case, Your Honor, while we have no reason to believe the  
2 witness is misstating anything about the history of the  
3 document, he just doesn't have personal information about  
4 decades worth of this document, including where it was  
5 originated, who actually put the entries in the document, where  
6 it was kept or maintained, if it was added to or subtracted to  
7 by anyone. There's simply just no testimony that he can give.  
8 He's given what he can, but he simply was a child back then.  
9 And so we would submit that before you can ever get to the  
10 ancient documents, you have to authenticate the document  
11 itself.

12 Also the concern that we have is the fact that it is  
13 written clearly as if it's not the preacher writing it.  
14 Perhaps he dictated it, you know, to someone else, but if  
15 that's the case, that's not his transcription. So the person  
16 who wrote it down would have to be here to say, "That's what he  
17 said word for word, not my interpretation of his statements."  
18 So we would just object on all those grounds, Your Honor.

19 THE COURT: The government's response?

20 MR. LAMPTON: It is just simply an issue for the court  
21 to decide based on all of the evidence, and that's why I wanted  
22 the court to have the entire journal to look at it and to see  
23 if it -- you can -- while the only thing that's relevant as far  
24 as evidence in this case is what's on page 92 and 93. In  
25 deciding whether or not the government can prove it's

1 authentic, then the court can look at the entire document and  
2 examine what that document pertains to, if that record in 1964  
3 is inconsistent with everything else in the journal, and it's  
4 not. It is exactly what it purports to be. The court needs to  
5 consider the age, and you can look at the condition of the  
6 document in determining whether you think this is a document  
7 that, in fact, meets the test of being over 20 years of age.

8 It doesn't necessarily have to be from Reverend Briggs to  
9 be admissible. It doesn't necessarily have to be in his  
10 handwriting. But when you look at the document that is his  
11 discharge that contains his signature and you look at the name  
12 Clyde Briggs as written in this document, you don't have to be  
13 an expert to notice they are striking similarities. That is  
14 something that the court can consider in determining  
15 authenticity.

16 This document was kept in the family's possession, not  
17 separated, but with other family documents and other journals  
18 pertaining to the church and to the activities of Reverend  
19 Briggs. This witness first noticed the journal or knew of its  
20 existence in 1985 when he says he made some entries. There is  
21 nothing on page 92 or 93. There are no strike-outs. There is  
22 no obvious changes. The only possible change would be on a  
23 date which you can see was originally July 12th to July 13th,  
24 and that change is, frankly, not that material for one day to  
25 the other.

1       But when you consider the history of the ancient documents  
2 exception, when you consider what is needed to be proved under  
3 the Federal Rules of Evidence and in Rule 901(8) ancient  
4 documents or data, and when you look at the exception under  
5 803, rule 16, I think clearly the government has met its burden  
6 in proving the age, the authenticity, and the requisite matters  
7 for it to be considered by the jury as evidence, and then the  
8 jury would then look at the document and give it whatever  
9 weight they deemed it is entitled to, but I think the first  
10 hurdle that's admissibility has clearly been met by the  
11 government.

12           THE COURT: All right. I need a copy -- not a copy,  
13 but I need the journal and the discharge certificate. Now I'm  
14 going to recess for lunch and make my ruling after lunch.  
15 Let's bring the jury back in.

16           MS. FITZGERALD: Your Honor, before the jury comes, I  
17 just wanted to remind the court that I believe the court had  
18 indicated we would be taking a lengthy lunch today.

19           THE COURT: Okay. Ms. Nester, you haven't responded  
20 to the government's motion. How long is it going to take you  
21 to make your response?

22           MS. NESTER: Can I have two hours, please?

23           THE COURT: Pardon?

24           MS. NESTER: Two hours, an hour and a half.

25           THE COURT: Two hours. Let's see. How many more

1       witnesses does the government have for today?

2           MS. FITZGERALD: Your Honor, we have a number of  
3       witnesses that would be available to us this afternoon, but  
4       there's not an issue with having them remain and testify  
5       tomorrow, if that's what we need to do. We certainly have  
6       enough witnesses to fill up the afternoon, but we can hold some  
7       witnesses over if that's necessary. Whatever is best for the  
8       court.

9           THE COURT: Then, what I would prefer is that we go  
10      through the witnesses and be prepared to take Mr. Edwards first  
11      thing in the morning, because if the defense wishes to have two  
12      hours, I don't want to recess for two hours over lunch. So,  
13      then, you'll have your response to me, then, first thing in the  
14      morning.

15           MS. NESTER: I may be able to get it to you tonight,  
16      but certainly first thing in the morning.

17           THE COURT: Then we'll go through the testimony of the  
18      witnesses until about 5:00. All right. Now, then.

19           MS. FITZGERALD: Your Honor, counsel is indicating  
20      that he doesn't believe that we will -- Your Honor, I just  
21      remembered that we will not be calling Dr. Hayne, which we had  
22      anticipated, and that was going to take a period of time. I  
23      had forgotten that. He's not available today. We won't be  
24      able to call him until tomorrow.

25           THE COURT: We'll take the witnesses that you have.

1 MS. FITZGERALD: Thank you, Your Honor.

2 THE COURT: Mr. Lucas?

3 MR. LUCAS: Your Honor, I'm sorry, but while we were  
4 discussing scheduling, I had a very close personal friend who  
5 died last night. I believe his funeral -- I believe her  
6 funeral will be sometime on Friday. I may be asking for some  
7 time if we could possibly do that.

8 THE COURT: All right. We'll take that matter up  
9 later, but thanks for advising me early. Bring the jury in.

10 (Jury In)

11 THE COURT: Please be seated. We're going to take our  
12 lunch recess now and return at -- make it 1:30. It's about  
13 12:20 now, so we'll come back at 1:30. Recall the instructions  
14 I have given you previously. I give those same instructions to  
15 you again. All right. I'll see you at 1:30. All rise. We're  
16 in recess.

17 MR. LAMPTON: Your Honor, can you caution the  
18 witnesses.

19 THE COURT: Do not talk to anyone at all about your  
20 testimony, no one at all. Okay.

21 MS. NESTER: Your Honor, we have a private matter we  
22 need to talk with you about for just one second before you  
23 leave the courtroom with counsel.

24 THE COURT: Okay. We're in recess.

25 (Recess)

1                 THE COURT: I have reviewed the document in question  
2 and the arguments of counsel. Whether the information  
3 contained within this document will be admissible is governed  
4 by the rules of 803(16) and 901(b)(8). 901(b)(8) sets out the  
5 standard to establish authenticity of the purported document.

6                 I've gone through the document, and what I've found in the  
7 document are matters pertaining to possible sermons, matters  
8 pertaining to church finances, of events with the church and  
9 matters of current events and, indeed, on the pages 92, 93, 94  
10 are set out the events which concern this matter.

11                 Also in the journal is a newspaper clipping from Saturday,  
12 October 7th, 1964. And the journal on page 93 is styled or  
13 headed with the language, quote, Things Happened in 1964 in  
14 Franklin County, unquote.

15                 So the question is whether this is the contours or the  
16 strictures for admissibility as an ancient document. First,  
17 some jurisprudence on the issue. There's the case of *Dartez v.*  
18 *Fiberboard Corporation* found at 765 F.2d 456, and this is a  
19 Fifth Circuit decision.

20                 On page 11 of that decision, the author sets out a decision  
21 on 803(16) reciting that ancient documents are most frequently  
22 authenticated under provisions of rule 901(b)(8) and then the  
23 author sets out the contours of 901(b)(8) which reflect the  
24 following: That the document be in the condition as to create  
25 no suspicion concerning its authenticity; that it be that it

1 was in a place where it, if authentic, would likely be; and, C,  
2 that the document has been in existence for 20 years or more at  
3 the time it is offered.

4 Further, I rely upon the case of *United States v. Kairys*.  
5 This case is cited at 782 F.2d 1374. On page 8 of that  
6 decision -- that was rendered by the 7th Circuit and the cert  
7 was denied in this case, and that cite is 476 U.S. 1153, 106  
8 Supreme Court 2258.

9 On page 8 of that decision, the court, in discussing rule  
10 901(b)(8), states that the question of whether evidence is  
11 suspicious and therefore inadmissible is a matter for the trial  
12 court's discretion. Next, the court further stated in its  
13 discussion on this matter of ancient documents that although  
14 the rule requires that the document be free of suspicion, that  
15 suspicion goes not to the content of the document but rather to  
16 whether the document is what it purports to be.

17 Further in this same decision, the court explained, quote,  
18 however, it is not necessary to show a chain of custody for  
19 ancient documents, unquote.

20 Then in American Jurisprudence, Second Edition, in  
21 discussion on these same matters, the authors recite that  
22 although reasonable custody of the document must be  
23 established, the document need not have remained in the same  
24 place for the entire custodian period, unquote.

25 The court then has reviewed this document and concludes

1 that it is what it purports to be. It is a journal of local  
2 events that was maintained by its author. The court is  
3 persuaded that the purported author of the document is indeed  
4 the author.

5 I have looked at the pages that are being offered by the  
6 government, these pages being 92, 93, 94. On those three  
7 pages, this court has found five places where the author of the  
8 document refers to Clyde Briggs. The court has looked at that  
9 handwriting of Clyde Briggs and compared it to that of the  
10 separation papers, the honorable discharge papers of Clyde  
11 Briggs, and the court is satisfied that the signature which  
12 appears on the honorable discharge is clearly the signature --  
13 is clearly the handwriting of the Clyde Briggs which appears in  
14 the journal.

15 Apparently Reverend Briggs referred to himself in the  
16 journal in the third person, so then he wrote at those five  
17 places and described himself in the third person. The  
18 signature on the honorable discharge clearly shows a very  
19 definitive "L-Y-D-E" as part of Clyde. That "L-Y-D-E" is  
20 reflected in all five of the Clydes -- of the handwriting in  
21 the journal. The "G-G" with a separated "S" are distinctive,  
22 and the way these "G"s are formed are clearly shown in the  
23 journal with a separated "S" as well as with a full "R" and a  
24 full "I."

25 The "B"s change in the journals. The writer of the journal

1 employed more than one "B", but this court is satisfied that  
2 the signature, the hand that wrote "Clyde Briggs" on the  
3 honorable discharge is the same hand that wrote the entries in  
4 the journal.

5 So then this court is persuaded that the document is in  
6 such condition that it creates no suspicion concerning its  
7 authenticity. The court is further persuaded that it was in a  
8 place where it would likely have been, and the court is further  
9 persuaded that this document has been in existence for 20 years  
10 or more. The court is further persuaded that it is an ancient  
11 document which comports clearly with the requirements of  
12 803 "16" and 901(b)(8). Therefore, the objection to use of the  
13 document is overruled.

14 MS. NESTER: Your Honor, in light of the court's  
15 ruling, we would move to redact -- actually substitute -- I'm  
16 sure the family is not going to want to part with that journal.  
17 It has got sentimental value. We would not object to using a  
18 copy of it to go back to the jury so it can be returned to the  
19 family, but we do want everything redacted from the pages that  
20 Your Honor mentioned, 92, 93 -- actually, I'm not quite certain  
21 what on 94 is relevant to this case. But we would object to  
22 everything being -- we would ask the court to redact everything  
23 on those pages except the entries that relate directly to this  
24 case. There's definitely 404(b) material in there. There's  
25 items that just have nothing to do with this matter, and we

1 would ask -- they have no probative value, and they are  
2 extremely prejudicial.

3 THE COURT: At the top of page 94, the journal  
4 reflects that on Monday, August 10, that a car loaded with  
5 white men came to the home of Reverend Clyde Briggs at Roxie  
6 and shot two times at a light in his yard, broke the glass of  
7 the light but the light kept on burning. This is at the top of  
8 page 94.

9 MS. NESTER: Yes, sir.

10 THE COURT: On 93 at the bottom -- on 93, the last two  
11 paragraphs which take up the majority of the page deal with the  
12 issue specifically here. And on page 92, there is a  
13 continuation of what was stated on 93, and indeed there is an  
14 arrow which points over to these two lines which are to  
15 complete the discussion at the bottom of 93. Above those two  
16 lines is a discussion on some matters which occurred back in  
17 June, June 21st.

18 Now, then, what says the government to her question of her  
19 statement that the matters should be redacted?

20 MR. LAMPTON: Your Honor, first of all, I believe the  
21 entire document should be admissible for the jury to view just  
22 like the court has had the opportunity to view the original  
23 journal. The journal itself, its age, everything in it points  
24 to the fact that it was written years ago, as the government  
25 contends. And so first of all, I'd ask for the court to admit

1 the entire journal, and I would, of course, ask the court to  
2 allow us to substitute a copy after the trial so the family  
3 could have the journal back.

4 But right now, I think that the journal itself is probative  
5 of what the government is trying to prove, so that is what I  
6 would ask the court -- the court to consider first that the  
7 entire journal be admitted. If the court rules that it is not  
8 going to admit the entire journal, then I'd like to step down  
9 and ask for the court to consider something else. But first I  
10 would ask the court to admit the entire journal as an exhibit.

11 THE COURT: Now, going back to defense, Ms. Nester, on  
12 your 404(b) challenge, what is it in here which would fit under  
13 404(b)?

14 MS. NESTER: I'm just referring now to those three  
15 pages. I assume I'm just going to refer to the three pages.  
16 Obviously, we object to the whole -- there's writings that his  
17 son wrote in there in the '80s that are definitely prejudicial  
18 and not related at all to this case.

19 THE COURT: And that could be explained to the jury.  
20 But now what is your 404(b) argument?

21 MS. NESTER: The 404(b) on page 92, the first entry  
22 is, "On Sunday morning, June 21st, at" -- something -- I can't  
23 read it -- I can't read that either -- "they turned a young  
24 Negro man out of Meadville jail and," he says, "Ku Klux Klan  
25 took charge of him and beat him unmerciful and left him for

1 dead. The young man came to and made his escape. He left  
2 Franklin County or Mississippi."

3 First of all, there's zero reason to believe my client had  
4 anything to do with that at all. Second of all, it goes to the  
5 same argument I've been making about bringing in other matters  
6 of violence that are not related to this case. I would ask  
7 that that entire entry be stricken.

8 THE COURT: Is there anything else?

9 MS. NESTER: Not on that page, because I believe the  
10 bottom part does directly relate to this case, the part with  
11 the arrow on it.

12 THE COURT: Anything else?

13 MS. NESTER: Page 93 talks about something on -- the  
14 first entry is related to the government's theory of the search  
15 of the church. The second entry deals with something that  
16 occurred on May 24th, which is not a date that has any  
17 relevance in this case. It claims that he was harassed by some  
18 white men who tried to stop him and yelled at him when he  
19 wouldn't stop. There's no suggestion my client was involved in  
20 that. It does involve someone who may be a witness in this  
21 case. If he's a witness, certainly the government can bring it  
22 back up then for impeachment if they choose to. But for  
23 purposes of introducing it in their case in chief, it is  
24 prejudicial. The implication is that my client was involved  
25 with it, which there's no evidence of that at all. That's

1       incredibly prejudicial, and we would ask that that entry be  
2       stricken.

3           Then the bottom entry is about the recovery of the bodies  
4       in this case. So that is obviously relevant to the  
5       government's theory.

6           Then on page 94 I believe is the third page, the top  
7       section about what happened in August where some men came to  
8       his house and shot up his light, again that's in August. This  
9       crime occurred in May. There's no suggestion my client had  
10      anything to do with that at all. By allowing the jury to see  
11      it, the jury is going to believe that for some reason it's  
12      related to this case and imply that my client was involved in  
13      that, which is beyond prejudicial. We would ask for that to be  
14      stricken.

15           I think the entry below it, since there's an argument that  
16       may be relating to the -- this particular crime, I don't have  
17       an objection with that remaining in since I think you could  
18       make the argument that that might apply to this case. But the  
19       one above it we would ask to be redacted.

20           THE COURT: All right. Now, response.

21           MR. LAMPTON: Your Honor, it all fits together, and  
22       all of it could be -- should be considered by the jury in  
23       determining the authenticity and the fact that this is a  
24       genuine document. And once again, the jury could be instructed  
25       that they are to consider anything else as not probative of the

1 defendant's guilt but simply as probative as to the  
2 authenticity and the worth and the weight that should be given  
3 to the journal. And once again, we think that it's important  
4 that the jury have the opportunity to view the entire journal  
5 in its appearance, in its entirety, so that they can form their  
6 own opinion about its authenticity and its worth and its  
7 weight.

8 THE COURT: Let me look through here. Let's see the  
9 dates that concern us in the journal. Start off with on page  
10 93. It says on Saturday, May 2nd. Now, did you have  
11 objection?

12 MS. NESTER: No, sir.

13 THE COURT: Don't have objection to that part?

14 MS. NESTER: No, sir.

15 THE COURT: Nor to the second part. Is that correct?

16 MS. NESTER: No, I do have objection to the second  
17 part.

18 THE COURT: "That on Sunday night, May 24," now, you  
19 have a problem with that?

20 MS. NESTER: Yes, sir.

21 MR. LAMPTON: Your Honor, I'll point out that none of  
22 those entries refer to the defendant. They are, however,  
23 corroborative of the fact that Reverend Briggs was being looked  
24 at and what's perhaps being a target. It's corroborative of  
25 other evidence that the government has produced and intends to

1 produce.

2 THE COURT: That's on 92, page 92. The first  
3 paragraph, it says, "On Sunday." See where I'm directing you?

4 MR. LAMPTON: No, sir, I don't have that in front of  
5 me.

6 THE COURT: The page before that on 93, the page  
7 before that on 92.

8 MR. LAMPTON: May I step out and obtain a copy of  
9 that? There's one outside.

10 THE COURT: Pardon?

11 MR. LAMPTON: Can I step out? I'd rather for the  
12 court have it and let me get a copy.

13 THE COURT: Okay.

14 (Short Pause)

15 MR. LAMPTON: Your Honor, I have a copy of page 92  
16 before me now. The question is the relevance of that.

17 THE COURT: That's correct.

18 MR. LAMPTON: Once again, it is corroborative of  
19 evidence that the government is putting on. It does not  
20 mention the defendant in any way. The handwriting is similar,  
21 the fact that he's interested in these type matters is  
22 significant, and the events here lead -- I believe could be  
23 considered by the jury in determining whether or not the impact  
24 document is authentic and whether the events that are directly  
25 related are, in fact, authentic. It shows he didn't single out

1 one incident or just consider one incident important but that  
2 he reported in his journal on all instances. And once again it  
3 does not mention the defendant in any way.

4 THE COURT: All right. Ms. Nester, any other  
5 argument?

6 MS. NESTER: Your Honor, you've ruled on authenticity  
7 so they don't need to establish that anymore. And just -- if  
8 this jury is being given something to look at, I believe it's  
9 fair for them to assume it has something to do with my client,  
10 and that's the problem with it.

11 THE COURT: Okay. Then I'm going to allow the entire  
12 journal to be shown to the jury. I will do so on a limiting  
13 instruction. The limiting instruction will state that there  
14 are other dates involved in this journal and the government  
15 makes no assertion that this defendant was involved in any of  
16 those other dates -- on those dates with other matters, that  
17 the court is providing this journal in its full state in order  
18 to allow the jury to review this journal as to whether they  
19 think the events were faithfully recorded.

20 Any problem with the limiting instructions, Ms. Nester?

21 MS. NESTER: No, sir.

22 THE COURT: Government?

23 MR. LAMPTON: No, Your Honor.

24 THE COURT: Now, Ms. Nester, even though I have  
25 admitted the document under the rules, in your arguments, do

1 you still intend to seek to persuade the jury that the events  
2 here were not faithfully recorded?

3 MS. NESTER: Can I have just a second, Your Honor?

4 THE COURT: Okay.

5 (Short Pause)

6 MS. NESTER: I respect the court's ruling that it's  
7 authentic. I believe that we have preserved our error for  
8 purposes of appeal. I don't believe that I need to go back in  
9 and make another record in front of the jury simply to preserve  
10 the error about --

11 THE COURT: I'm not talking about that. I'm asking  
12 whether during the course of trial in either presentation of  
13 evidence or closing argument you would challenge the content of  
14 the writing as to whether the event described here actually  
15 occurred.

16 Now, I'm going to tell you why I'm asking the question.

17 MS. NESTER: Okay. That would help me. I'm not sure  
18 I understand what you're asking me.

19 THE COURT: The journal note recites events that  
20 allegedly occurred when police came to the church.

21 MS. NESTER: Yes, sir.

22 THE COURT: Now, if you are challenging the content of  
23 the journal on the point, then I think the government has the  
24 right to show through the entire journal that the writer was  
25 concerned with various events and kept a journal of them.

1 Therefore, as I said, the entire journal can be shown to the  
2 jury on that point because then the jury can see that the  
3 writer not only reflected on that incident but he reflected on  
4 other events that would fall within the purview of civil rights  
5 and events that would have occurred -- allegedly occurred  
6 around him or to him on the matter of civil rights.

7 So if you're challenging the contents at this point through  
8 the journal, then I think they have a right to show that he  
9 just didn't make that one notation. If only that matter is  
10 shown to a jury, then that leaves open the question as to why  
11 that was written down as opposed to the government's contention  
12 that the jury should see the entire journal to see the context  
13 in which all of this was taken.

14 MS. NESTER: I understand, Your Honor. I think now I  
15 can answer your question. It's my understanding that this  
16 witness does not have personal knowledge other than the finding  
17 of the journal about what happened at the church that day. We  
18 have no witnesses who are alive today that can rebut what is in  
19 that journal, nor are we going to have any that are going to  
20 put on in our defense. There are no living witnesses that we  
21 have been able to locate that can rebut what's in the journal.

22 I can't challenge the content of the journal with this  
23 young man because he wasn't there and doesn't know. Your Honor  
24 has ruled on my objection on authenticity. So if what you're  
25 asking me is are we going to try to suggest during cross of

1 this witness that Reverend Briggs --

2 THE COURT: Not this witness, but the entire trial.

3 MS. NESTER: I have no witnesses who can rebut what is  
4 in Reverend Briggs' diary. There is no limit that we have been  
5 able to uncover.

6 The answer to your question is, no, sir, in terms of the  
7 content to try to impeach -- I think what you're asking me is  
8 I'm going to try to impeach Reverend Briggs even though he's  
9 not here, which I know I can do under Crawford, we don't have  
10 any evidence to do that with. So the answer is no. We still  
11 ask that that be the only thing shown to the jury.

12 THE COURT: Well, Mr. Lucas objected before as to this  
13 discussion on the matter of the search.

14 MS. FITZGERALD: I think that was simply because  
15 Ms. Fitzgerald was leading the witness to say something he had  
16 not said. As far as I know, there is no witness that's going  
17 to come into this trial and say, "There was not a search. We  
18 were there, and it did not happen." There's no evidence out  
19 there. So no.

20 THE COURT: The government's theory Ms. Fitzgerald  
21 gave me earlier was that this was some sort of pretense you  
22 said to get into the church.

23 MS. FITZGERALD: Your Honor, it's the government's  
24 theory that in this case the law enforcement officers may have  
25 told Reverend Briggs that they suspected a bomb was going to be

1 placed in the church in order to persuade Reverend Briggs to  
2 unlock the church to allow them to do what was, in fact, a  
3 search for guns. It's apparent from the diary entry that  
4 Reverend Briggs caught on to that and realized that it was, in  
5 fact, a search for guns at some point. However, I would also  
6 like to remind the court that not only is the jury -- the jury,  
7 whether or not defense challenges a particular item, is still  
8 going to be looking at the diary as a whole and making its only  
9 credibility determinations. And the fact that if they look at  
10 these entries and they see the selective service signature and  
11 they see that repeated five different times in the journal,  
12 they may have questions about why somebody refers to themselves  
13 in the third person and may distrust that information if they  
14 don't have all of the information available to them so that  
15 they are persuaded -- not just the court, but so that the jury  
16 is persuaded -- because that's who the government has to  
17 persuade here.

18 So I would urge the court to stand by its initial ruling  
19 and allow the government to introduce this diary in its  
20 entirety. It is relevant, it is probative, and we are entitled  
21 to prove our case. Whether or not the defense wishes to  
22 challenge it, that doesn't preclude the jury from challenging  
23 it.

24 THE COURT: Okay. Thank you. Response?

25 MS. NESTER: They are not entitled to prove things

1 that are not charged in this case, which is what they are  
2 trying to do. They are trying to get in over and over and over  
3 again incidents of violence against other African Americans  
4 that they can take a broad brush and paint my client with from  
5 top to bottom. They have been doing it from beginning. They  
6 are doing it again now. There is absolutely nothing that  
7 reading those things in context will assist the jury in  
8 deciding whether or not to -- whether or not the rest of it is  
9 valid, especially when it's not going to be rebutted. It is  
10 unrebutted testimony.

11 She can get up and say there's no one that says the search  
12 didn't happen. It's unrebutted. So I don't know how much more  
13 probative help she needs, short of making my client responsible  
14 for every act of violence that happened in 1964 in Franklin  
15 County, which is exactly what they are doing.

16 THE COURT: Okay. I am going to adhere to the earlier  
17 ruling. I'm going to let the jury see the entire journal, and  
18 I'm going to give a limiting instruction. We'll start in about  
19 six minutes.

20 (Recess)

21 THE COURT: Ms. Nester, are you finished with it?

22 MS. NESTER: Yes, sir.

23 THE COURT: Now, I said that I was going to submit a  
24 limiting instruction to the jury. Listen carefully and tell me  
25 whether you have any objections. I have admitted into evidence

1       this journal. Included within its pages are incidents and  
2       events totally unrelated to the matter pertaining to this  
3       trial. An incident is mentioned as having occurred on Sunday  
4       morning, June 21, concerning the beating of a man who escaped  
5       and left Franklin County. Another incident is mentioned as  
6       having occurred on Sunday, May 24th, where, according to the  
7       journal, some whites tried to stop Reverend Briggs. A third  
8       episode mentioned in the journal allegedly occurred August 10,  
9       where, according to the journal, some whites shot at a light in  
10      the -- in Reverend Briggs' yard.

11           The government does not allege that this defendant here had  
12       anything whatsoever to do with these matters and the government  
13       will offer no proof of any connection.

14           I have admitted the journal in its entirety unredacted of  
15       these -- bad writing. I have admitted the journal in its  
16       entirety unredacted, allowing all of its contents to be shown  
17       to you, the jury, to allow you to assess the journal's  
18       credibility upon considering it as a whole. Is that all right  
19       with the defense?

20           MS. NESTER: That's fine. I do have one request,  
21       though. The term "unredacted" is kind of a legal term of art,  
22       and I think it's real important for the jury to know that we  
23       made a decision not to eliminate any part. If maybe you could  
24       just put that maybe in layman's terms, because I think that's a  
25       very important part of Your Honor's instruction that I want

1 them to understand.

2 THE COURT: Okay. Any objection by the government?

3 MR. LAMPTON: No, Your Honor.

4 THE COURT: All right. What about no deletions --  
5 with no deletions?

6 MS. NESTER: No, sir.

7 THE COURT: Is that okay?

8 MS. NESTER: That's fine, Your Honor.

9 MR. LAMPTON: Yes, sir.

10 THE COURT: Then one other matter. You're asking for  
11 the journal in its entirety, and I will admit the journal in  
12 its entirety. So, then, what is the number?

13 MR. LAMPTON: G-32A.

14 THE COURT: G-32A is admitted over objection.

15 (Exhibit G-32A marked)

16 THE COURT: I also have the honorable discharge.

17 MR. LAMPTON: The government would move that it be  
18 admitted as G-32D.

19 THE COURT: Is there any objection?

20 MS. NESTER: Hearsay, and it's not relevant because  
21 Your Honor has ruled on authenticity.

22 THE COURT: I will put it in. G-32D.

23 MR. LAMPTON: The original journal is what number?  
24 The original journal is 32A. Let's be sure.

25 MR. LUCAS: According to your exhibit list --

1 MS. FITZGERALD: It's C. I'm sorry, Your Honor.

2 THE COURT: 32C is admitted over objection.

3 MS. FITZGERALD: C is the journal, Your Honor.

4 THE COURT: Pardon?

5 MS. FITZGERALD: Government's 32C is the original of  
6 the journal.

7 THE COURT: 32C is the original of the journal.

8 G-32A, is that the --

9 MR. LAMPTON: That is a copy of the journal.

10 THE COURT: A copy?

11 MS. FITZGERALD: Correct. And 32D, as in dog, is the  
12 discharge paper.

13 THE COURT: 32D.

14 (Exhibit G-32D marked)

15 MR. LAMPTON: Your Honor, the government would also --

16 THE COURT: One second. Hold on. Let me finish this  
17 first. Mr. Lucas?

18 MR. LUCAS: I'm sorry, Your Honor. I'm just trying to  
19 get this straight. I've got the exhibit list that they  
20 provided me and the numbers on their exhibit list do not match  
21 up with --

22 MS. FITZGERALD: I apologize, Your Honor. We had two  
23 different journals, and we had several copies and the numbering  
24 seems to have gotten a little bit off. 32C -- I misspoke. 32C  
25 is the second journal. It's not the journal that's being

1 admitted here.

2 THE COURT: 32C is a copy?

3 MS. FITZGERALD: No. 32C is a second journal. It's  
4 just another journal that was provided to us by Mr. Briggs. It  
5 doesn't have anything to do with --

6 THE COURT: 32C is not admitted.

7 MS. FITZGERALD: Correct. 32C is not being offered.

8 THE COURT: Okay.

9 MS. FITZGERALD: 32A is, in fact, the original of the  
10 journal that is at issue here.

11 THE COURT: Okay.

12 MS. FITZGERALD: I'm sorry for the confusion.

13 THE COURT: That's A. So there's no C, and then I  
14 have a D.

15 MS. FITZGERALD: D is the discharge paper.

16 THE COURT: Okay. Now, there's one other item and  
17 that's the clipping --

18 MR. LAMPTON: Yes, sir.

19 THE COURT: -- in the journal.

20 MR. LAMPTON: Yes, sir.

21 THE COURT: Now, do you move for the clipping in the  
22 journal?

23 MR. LAMPTON: Yes, sir.

24 THE COURT: As I understand the testimony, the  
25 clipping was already embedded in the journal?

1 MR. LAMPTON: Yes, sir.

2 THE COURT: What says the defense?

3 MS. NESTER: Your Honor, that's media that accuses my  
4 client of being guilty of torso murders. Of course, we object  
5 to that. It is completely not relevant. If it's simply a  
6 matter of trying to establish that the article was preserved,  
7 then they need to clip off the headline and the media report  
8 and they can just simply introduce the pictures which are  
9 already in and the date on top and redact it. But, obviously,  
10 to let in a press report of -- you know, of accusing my client  
11 of murder, yes, we have an objection to that.

12 THE COURT: Okay. Now, I will allow the witness to  
13 testify that there was a clipping concerning arrests, but I  
14 will not let the clipping in itself. So the clipping is marked  
15 for identification. Clipping for identification only and not  
16 to be read to the jury.

17 MS. FITZGERALD: G-85.

18 THE COURT: G-85. G-85 is the clipping.

19 MS. FITZGERALD: Actually, Your Honor, I apologize.  
20 This is a new exhibit and so is another one that we were going  
21 to be offering. Let's make that one G-86.

22 THE COURT: G-86 is the clipping.

23 (Exhibit G-86 for ID marked)

24 MR. LAMPTON: Your Honor, I'm going to leave it in the  
25 journal and question him about it and make sure that this does

1 not go into evidence and not allow him to read anything from it  
2 but just ask --

3 THE COURT: Let me see. I read it before, but let me  
4 read it one more time.

5 (Short Pause)

6 THE COURT: I think the pictures of both are in.

7 MS. NESTER: They are, Your Honor.

8 THE COURT: The arrest, I think, is also -- well, it  
9 is. It is also in. But still the two pictures linked together  
10 with the heading, quote, Held in Torso Murders, unquote, I  
11 think may be prejudicial. The witness may testify that an  
12 article concerning arrests of these two persons was also found  
13 in the journal.

14 MR. LAMPTON: I will lead him through that.

15 THE COURT: Okay.

16 MR. LAMPTON: Let me just walk out and see him and  
17 show this to him and tell him what not to say, what --

18 THE COURT: Is that okay, Ms. Nester?

19 MS. NESTER: I'm sorry, Your Honor. I apologize. I  
20 couldn't hear Mr. Lampton.

21 THE COURT: He wants to go outside and tell the  
22 witness not to discuss -- mention that headline.

23 MS. NESTER: Please.

24 THE COURT: Okay.

25 (Short Pause)

1 (Jury In)

2 THE COURT: Is the government ready to go forward?

3 MR. LAMPTON: Yes.

4 THE COURT: Defense?

5 MS. NESTER: Yes.

6 THE COURT: Bring in the witness first.

7 (Short Pause)

8 DIRECT EXAMINATION

9 BY MR. LAMPTON:

10 Q. Will you state --

11 THE COURT: Wait a second. In your absence, we have  
12 done various things. First of all, I have admitted into  
13 evidence some additional items. I've admitted G-32A, G-32A,  
14 which is -- which will be referred to here as a journal. I  
15 have admitted G-32D, which will be referred to as some  
16 discharge papers. Those are two documents I have admitted.

17 In addition, we have sworn this witness and he will be  
18 testifying presently.

19 Now, I will allow you to begin questioning of the witness  
20 and at the appropriate time I will give the jury a limiting  
21 instruction. Remember he has been sworn outside your presence,  
22 but he is sworn. Now, then, you may start.

23 DIRECT EXAMINATION

24 BY MR. LAMPTON:

25 Q. Would you, please, state your name for the jury, please,

1 sir.

2 A. Yes. My name is John Ellis Briggs.

3 Q. And where do you live, Mr. Briggs?

4 A. Between Roxie and Biloxi.

5 Q. And how old are you?

6 A. I am 49.

7 Q. Your parents were whom or are whom?

8 A. Yes. My mother is Mary Geraldine Briggs and my father is  
9 Reverend Clyde Bennie Briggs.

10 Q. Are your mother and father still alive?

11 A. They're deceased.

12 Q. When did your father die?

13 A. January 18, 1965.

14 Q. At an earlier time you gave me a photocopy of a picture of  
15 your father. Do you remember that?

16 A. Yes, sir.

17 Q. And does that photocopy accurately reflect your remembrance  
18 of your father at that time?

19 A. Yes, sir, at that time, it does.

20 MR. LAMPTON: Your Honor, I'm going to offer as an  
21 exhibit for the first time a photograph that I'm going to ask  
22 him to identify as G-85.

23 BY MR. LAMPTON:

24 Q. Can you identify that photograph?

25 A. Yes, sir, I can identify this. That's my father.

1 Q. And does that picture fairly and accurately reflect the way  
2 you remember your father?

3 A. Yes, sir. It's a picture from a pastor appreciation  
4 program that was dated from the 14th of February that was  
5 supposed to be held the month after he passed away.

6 Q. And how old were you when your father died?

7 A. I was seven.

8 MR. LAMPTON: Your Honor, the government will offer  
9 the photograph as an exhibit.

10 THE COURT: That's G what?

11 MR. LAMPTON: 85.

12 THE COURT: G-85. Any objection?

13 MS. NESTER: I'm sorry. No objection, Your Honor.

14 THE COURT: G-85 is admitted.

15 (Exhibit G-85 marked)

16 MR. LAMPTON: I'm going to attempt to display this on  
17 the Elmo.

18 MS. FITZGERALD: I don't believe it's on, Your Honor.

19 BY MR. LAMPTON:

20 Q. If you look on the screen in front of you, Mr. Briggs, is  
21 that a picture of your father?

22 A. Yes, sir, it is.

23 Q. What was your father's occupation?

24 A. My father was a Baptist preacher.

25 Q. And how long had he been a Baptist preacher, if you know?

1 A. I have an ordination of him being ordained in 1947.

2 Q. And prior to 1947, do you know what your father did, where  
3 he was?

4 A. He left the farm and went to the second world war.

5 Q. And have you provided us with a document that purports to  
6 be or that is his discharge from the armed services?

7 A. Yes, sir.

8 MR. LAMPTON: Your Honor, I'm going to publish for the  
9 jury what has been marked as G-32B.

10 BY MR. LAMPTON:

11 Q. Can you identify the document that I have shown to you?

12 A. Yes, sir, I can.

13 Q. And who does this document purport to be connected with?

14 Who is the person that this honorable discharge is referring  
15 to?

16 A. It says here Clyde Briggs.

17 Q. And 34 would be what, if you know, the 34626130?

18 A. I don't know if that's his service number or not. I don't  
19 know.

20 Q. And then on the back, it has some information pertaining to  
21 your father, and it shows where he served. Where did your  
22 father serve during the Second World War?

23 A. It has on here Naples, Foggia, Rome, Arno, Southern France,  
24 Rhineland, and Central Europe.

25 Q. And does this document bear your -- what purports to be a

1 fingerprint and a signature?

2 A. Yes, sir, it does.

3 Q. You would have no idea if that is your father's fingerprint  
4 or not, would you?

5 A. I wouldn't unless it goes with the signature, sir.

6 Q. As far as the signature goes, do you recognize that as the  
7 signature of your father?

8 A. Yes, sir.

9 Q. You tell me that your father pastored a -- did you tell me  
10 how many churches he pastored?

11 A. Yes. At that time in '64, simultaneously he was pastoring  
12 five congregations in southwest Mississippi.

13 Q. Did you tell the jury where those congregations were?

14 A. I think I remember offhand, I'm not sure exactly. I can  
15 name at least Roxie, Centreville. Roxie, Centreville. I think  
16 it was Doloroso, also at Crosby, and I'm thinking Monroe. It's  
17 outside of Meadville, I think.

18 Q. Are you familiar with the church in Roxie, Mississippi?

19 A. Yes, sir, I was baptized there.

20 MR. LAMPTON: I'm going to publish for the jury, Your  
21 Honor, Exhibit G-73C and ask the witness if he can identify  
22 that exhibit.

23 BY MR. LAMPTON:

24 Q. Can you identify what is shown in that photograph?

25 A. Yes, sir. That is the Roxie First Baptist Church in Roxie,

1 Mississippi.

2 Q. And has that church changed any over the years? Do you  
3 remember it any differently when you were a seven- or  
4 eight-year-old?

5 A. Yes, sir. If you look at the picture to the left, that's  
6 an addition to that left side -- the back to the left side  
7 there as you look at the picture.

8 Q. Yes, sir. I understand the addition. What is the  
9 significance of that addition as far as the way the church  
10 looked in 1964? Was that addition there at that time?

11 A. Oh, no, sir, it wasn't.

12 Q. Other than the addition, does the front of the church and  
13 its proximity to the road, is that the same as it was in 1964?

14 A. Yes, sir.

15 Q. Okay. So if the jury looks at that, if they understand  
16 that the annex was not there, they could consider that  
17 everything else was pretty much the same as it was in '64?

18 A. Yes, sir.

19 Q. You told us that your father passed away in January of  
20 1965?

21 A. Yes, sir.

22 Q. Where were you living then?

23 A. I was living in Roxie at my mother and father's home.

24 Q. And is that home that you lived in in 1964 in Roxie,  
25 Mississippi, is it still there? Is it still in existence?

1 A. Yes, sir, it's still there on the hill.

2 Q. Are you still connected with that home in any way?

3 A. Yes, sir.

4 Q. How are you connected to it?

5 A. I go back and visit as much as possible. My brother still  
6 lives there. And I'm in the process of building a cabin there  
7 in Franklin County for when I go into town. Usually that's  
8 where I shower, you know.

9 Q. Is the home still in the family?

10 A. Yes, sir, it is.

11 Q. How far is that home from the church that's up on the  
12 monitor now?

13 A. Five-minute, ten-minute walk.

14 Q. And as far as --

15 A. Maybe about three quarters of a mile, maybe, a mile.

16 Q. Is it on the same road as the church is on?

17 A. Yes, sir.

18 Q. To your knowledge, did your father during his lifetime  
19 maintain a journal or record of what he was doing in the  
20 various churches and what was important to him that was  
21 occurring in the community?

22 A. To my knowledge, yes, he did.

23 Q. And do -- is there a journal that has been admitted into  
24 evidence, and I'm going to ask you -- I'm going to show you the  
25 outside of the journal, and for the record, that is G-32A, and

1 ask you if you can identify that journal.

2 A. Yes, I can.

3 Q. If you would, just take the jury through the history that  
4 your family has with this journal.

5 A. Yes. With this journal, I headed to Europe, I think it was  
6 in '81. I first got information that my father had -- I've  
7 always been inquisitive. I was seven when my father died.  
8 I've always been inquisitive about what happened with my  
9 father's life. So in '81 is when I first began to get some  
10 inkling that my father had left some writings about him, that I  
11 would be able to get some firsthand information about my  
12 father, and it wasn't until '84 when my oldest brother passed  
13 away that I -- the first time I actually seen the journal  
14 themselves. And I guess my mother was -- I don't know whether  
15 she got them from my oldest brother or where she got them from,  
16 but that was in '84. And in '89 is when I basically -- '84 is  
17 when I first began to read the journals and in '89, I was on my  
18 way to Europe, and I had a chance to really spend more time  
19 with the journal. And then in '97, I returned from Washington  
20 state back here to Mississippi. My brother had taken ill, so I  
21 came back.

22 And while I was here, in '97, my second oldest brother had  
23 taken ill, so at that time he felt that I should know about the  
24 journal and take care of it, because his prognosis was a  
25 two-year prognosis. He wanted me to look at the journal and

1 take care of the journals after that. This was in '97.  
2 Basically, he kept the journals within his possession there at  
3 his mom and dad's home, and when he passed away in 2002,  
4 basically I knew where they were and I took possession of them.  
5 When I say "took possession of them," they were there in the  
6 house, but he had passed away, so I knew that he would like for  
7 me to have them and to whatever would come about with it, and I  
8 guess here I am today.

9 Q. Was this the only journal or the only document that your  
10 father kept that your brother and your family maintained and  
11 kept for a family history?

12 A. No. There's other paperwork and another journal about  
13 church activities.

14 Q. When you would receive this journal from your brother or  
15 from other people in the family, what else would come with that  
16 journal?

17 A. You mean as far as newspapers clippings or letters or  
18 cards?

19 Q. What other -- would you be given just that journal  
20 individually or would you be given --

21 A. Oh, no, sir. It was a collection of my dad's -- the  
22 journal that's on display here, another one that has some more  
23 of his church activities and church membership, tithing and all  
24 of that in it, and also some newspaper clippings that was  
25 inside the manuals also.

1 Q. Now, while this journal was in your possession back in the  
2 '80s or '90s, did you make any notes in it or is any of the  
3 writing in this journal yours?

4 A. Yes, sir, there is.

5 Q. And if the jury were to look at the journal and come across  
6 more of your writings, how would they know that it was your  
7 writing and not something that purports to be your father's?

8 A. Well, the handwriting is quite different, plus I have it  
9 dated for I think it's October 1989, and another one -- entry  
10 is dated sometime right after the current indictment of  
11 Mr. Seale. I had a radio program that I did, and I had taken  
12 some notes in the journal. I think it was sometime in January  
13 of this year.

14 Q. And other than those that you have put in there, is there  
15 any other -- well, in addition to that, there's some -- there's  
16 a notation on every page and who put those notations there and  
17 when, if you can remember, and for what purpose?

18 A. Yes, sir, the 18th of May of this year, one of your  
19 investigators had come to pick up the journal in order to  
20 verify the authenticity and to show that there had been no  
21 changes. He agreed that I would have a copy, but I would sign  
22 off the journal as far as initialing it and dating it showing  
23 that everything was as it was when I handed it over to him.

24 Q. Those entries are initialed and dated in this year, 2007?

25 A. Yes, sir, May of this year.

1 Q. As far as the other writing in the journal, is the writing  
2 of whom?

3 A. I'm sorry, sir?

4 Q. Other than what you describe your writings deal with the  
5 radio program and dealing with some of your thoughts that are  
6 dated in the 1980s, the notes just as to the initials of the  
7 investigator, is there anything else in this diary that's  
8 not --

9 A. I'm not sure that's -- maybe the first page of the second  
10 page. I'm not sure whether or not it is my dad's or my  
11 brother's. I think the first or second page in that, I think  
12 it is.

13 MR. LAMPTON: Your Honor, may I just show him the page  
14 that he has referred to?

15 THE COURT: Okay.

16 BY MR. LAMPTON:

17 Q. That's on the second page?

18 A. Yes, sir. That top portion in the blue ink, that is not my  
19 writing.

20 Q. That's not whose writing?

21 A. That is not my writing in the blue ink there. I don't know  
22 whether it's my father's, whose it is. Now, that writing where  
23 it speaks the name of "I am" and the other and the black  
24 writing in that.

25 Q. The printed?

1 A. Yes, sir. The printing is mine.

2 Q. Is whose?

3 A. Mine.

4 Q. I've asked you to look through the journal for the purpose  
5 of being able to tell us what handwriting you believe to be  
6 your father's and what handwriting you know is yours and  
7 someone else's?

8 A. Yes, sir, exactly.

9 Q. Other than that first page with the blue writing and the  
10 black printing and what you've already described, is there  
11 anything else in the journal that you don't consider to be your  
12 father's handwriting?

13 A. Everything should be my father's handwriting.

14 Q. If you would, just continue to trace the history of that  
15 journal forward to after you received it in your possession up  
16 to the point where it came to leave your possession and be here  
17 today. Just tell the -- I guess the rest of the story to the  
18 ladies and gentlemen of the jury.

19 A. Yes, after I did -- like I said, my second oldest brother,  
20 when he became ill in '87, pretty much asked me to take of what  
21 he had there, and it was placed in the loft there at our home  
22 in 2002 when my brother passed away. And I received, I guess,  
23 the guardianship of the documents. They have been in my  
24 father's -- my mother's and father's loft there all of this  
25 time until Mr. Lampton asked about a search warrant, possible

1 search warrant for May 2nd, 1964, and looking for that search  
2 warrant, which I thought would be there because the church had  
3 been searched --

4 MS. NESTER: Objection, Your Honor. This witness does  
5 not have personal knowledge of that, and I would object to the  
6 narrative form of testimony for exactly that reason.

7 THE COURT: Counsel, ask your question.

8 BY MR. LAMPTON:

9 Q. You were looking through the records in order to find what?

10 A. A search warrant.

11 Q. And in looking through the records, what did you find that  
12 may have been of some significance involving the search of your  
13 father's church on May 2nd of 1964? Can you tell the jury  
14 that.

15 A. Yes, I found an entry that it was from that date or was  
16 said to have been from that date that referred to the searching  
17 of the church on May 2, 1964.

18 Q. What did you do with that information?

19 A. Let you know that I had found it, and I think it was  
20 September of 2006 you came to look at it.

21 Q. At that time what, if anything, did you give me?

22 A. I think I gave you some copies of those relevant pages.

23 I'm sure I gave you copies of the relevant pages, yes.

24 Q. At that time, did you maintain the original?

25 A. Yes, sir.

1 Q. And you maintained it until someone with my office asked  
2 for it and initialed the pages and gave you a copy?

3 A. Until the 18th of May this year, yes, sir.

4 Q. When was the first time that you realized that there was an  
5 entry in your father's journal that concerned the search of the  
6 church that your father pastored in Roxie, Mississippi, in  
7 1964?

8 A. I pretty much known that the entry was there since '89.

9 Q. When was the first time anyone connected with law  
10 enforcement or prosecution asked to see that journal or was  
11 made aware of what was in the journal?

12 A. Last year.

13 Q. And who asked for it?

14 A. When you was looking for the search warrant and when I went  
15 to look for the search warrant and found that entry there and  
16 brought it back up to you and told you about what was there.

17 Q. Prior to that time, do you have any knowledge of -- through  
18 your family history of anything of that information being given  
19 to any law enforcement officer?

20 A. I have no knowledge.

21 MS. NESTER: Object to hearsay.

22 THE COURT: He said he had no knowledge. Let's go on.

23 MR. LAMPTON: Your Honor, I think at this time I'm  
24 prepared to go into the journal.

25 THE COURT: Go ahead.

1 BY MR. LAMPTON:

2 Q. Do you remember what pages the entries are that concern the  
3 search of the church?

4 A. Yes, sir, it's page 93, top of page 93.

5 Q. Are you familiar with this page?

6 A. Yes, I am.

7 Q. If you would, please, read that into the record so the jury  
8 can follow along. Can you see it clearly enough on your  
9 monitor that you can read that?

10 A. Yes, sir, I can.

11 Q. Just take your time, if you would, just slowly read that  
12 down to the first line.

13 A. Starting at the top of the page?

14 Q. Yes, sir.

15 A. On page 93, "Things happened in 1964 in Franklin County.  
16 On Saturday, May 2nd, state highway patrol and deputy sheriff  
17 Kirby Schell come to Crosby, Mississippi, to get pastor of the  
18 Roxie colored Baptist Church, Reverend Clyde Briggs, because  
19 they had been informed that a group of guns was hid in the  
20 church and some white men was going to bomb the church that  
21 night. No guns were found in the church, but the law officers  
22 advised the pastor to see to the church being locked when all  
23 leave the church."

24 Q. The narrative or the entrances -- the entrance into your  
25 father's journal is in the third person. It doesn't refer to

1 I.

2 A. Yes.

3 Q. Is that unusual or are you able to tell the jury that that  
4 entry was, in fact, made by your father?

5 A. I assume that it was made by my father because there are  
6 other entries where my father also speaks in the third person  
7 as far as giving general statements about his ministry and the  
8 way that a pastor is supposed to conduct oneself as a pastor of  
9 a church.

10 Q. Are you familiar with his handwriting?

11 A. Yes, sir.

12 Q. At this time so the jury can also have a chance to compare  
13 his handwriting and reach a conclusion, I'm going to try with  
14 some help --

15 MS. NESTER: Just for the record, I renew the  
16 objection we made outside the presence of the jury about this  
17 line of testimony.

18 THE COURT: Okay.

19 BY MR. LAMPTON:

20 Q. I'm going to ask if you see two signatures there of Clyde  
21 Briggs?

22 A. Yes, sir, I do.

23 Q. And I'm going to direct your attention to several other  
24 places on that page. Before I make -- allow you to make a  
25 comparison to the jury, I'm going to ask you to read the next

1 entry on that page of the journal underneath what you just  
2 read.

3 A. Yes, sir. "On Sunday night, May 24, Reverend Clyde Briggs  
4 was coming from church service at New Bethel Baptist Church  
5 east of Meadville, Mississippi, and when he got near Roxie,  
6 Mississippi, two carloads of white men tried to stop him on the  
7 highway."

8 MS. NESTER: Your Honor, I object to him reading this  
9 portion for the reasons Your Honor's already ruled on. This is  
10 not related.

11 THE COURT: Let him finish reading this and then I'll  
12 have an instruction to the jury. Go ahead.

13 A. "When he got near Roxie, Mississippi, two carload of white  
14 men tried to stop him on the highway, but he would not stop.  
15 They followed him all the way home, and one of the men, Jack  
16 Davis, got out of the car and did a lot of big talk and told  
17 Reverend Briggs that the next time they try to stop him, he  
18 better stop."

19 THE COURT: Now, ladies and gentlemen of the jury,  
20 earlier I told you I had admitted the journal into evidence.  
21 Included within its pages are incidents and events totally  
22 unrelated to the matters pertaining to those of this trial. An  
23 incident is mentioned as occurring on Sunday morning,  
24 June 21st, concerning the beating of a man who escaped and left  
25 Franklin County. The journal discusses another incident as

1 having occurred on May 2nd -- excuse me -- on May 24th, when,  
2 according to the journal, some whites tried to stop the  
3 Reverend Briggs, which you just heard. Another incident,  
4 another episode mentions an August 10 date when, according to  
5 the journal, some white men shot out the lights at Reverend  
6 Briggs' yard.

7 Now, the government does not allege that the defendant here  
8 had anything whatsoever to do with those matters and the  
9 government will offer no proof in any attempt to connect this  
10 defendant to those incidents.

11 I have admitted this journal in its entirety with no  
12 deletions to any of its contents to allow you, the jury, to  
13 assess the journal's credibility upon considering it as a  
14 whole.

15 Now, then. The last incident that the witness read is one  
16 of the ones I just mentioned to you, and this incident is not  
17 being attributed whatsoever to this defendant. There's no  
18 contention that he had anything to do with that incident. I  
19 have admitted the journal and all of its contents so that you  
20 may assess the journal's credibility and authorship.

21 BY MR. LAMPTON:

22 Q. Would you, please, refer to the monitor, and I have placed  
23 the journal next to the discharge and with two signatures and  
24 ask if you could examine those two signatures along with the  
25 jury.

1 A. Yes, sir. I see.

2 Q. Have you done that? I have moved to the next time the word  
3 "Briggs" appears and ask you to view just the Reverend and the  
4 Briggs and -- or just the word "Briggs" and just to view the  
5 two as opposed to each other. Have you done that?

6 A. Yes, sir.

7 Q. Let me ask you to read, please, just the next entry into  
8 the journal that purports to mention the events of another day.  
9 Would you read that.

10 A. Yes, sir. "On Monday, July 13th" -- written over a 12, it  
11 looks like -- "the body of two young Negro men were found in  
12 the Mississippi River. The men were Henry Dee and Charles  
13 Moore of Meadville, Mississippi. On that same night, someone  
14 shot into the home of Reverend Clyde Briggs with a rifle."

15 Q. Does that -- there's an arrow, I believe, and, if you  
16 would, let's -- first of all, I believe there's a Clyde Briggs  
17 on that page, and it has now been in close proximity to the  
18 Clyde Briggs on the discharge, and ask if you've had an  
19 opportunity to view both those signatures.

20 A. I see them both, yes.

21 Q. And then we're going to the next page. Instead of being  
22 94, this is now page 92.

23 A. The previous page was 93.

24 Q. And this is page 92 that I'm showing you now. And can you  
25 read that entry for us. First of all, read the entry if you

1 know which one, if any, pertains to July 13th.

2 A. Yes, sir. The arrow on the right side of the page there is  
3 a continuation of -- is pointing from the page 93 back to page  
4 92. It says, "These two young men had not been seen since the  
5 early part of May in Meadville, Mississippi."

6 Q. And then the top entry applies or purports to be an entry  
7 concerning a different day and a different occurrence. If you  
8 would, read that for us, please.

9 MS. NESTER: Objection to him reading that one. It's  
10 unrelated as well, Your Honor.

11 THE COURT: Okay. He can read it, and I will advise  
12 the jury as I have earlier. Go ahead.

13 A. "On Sunday morning, June 21st, at dawn of day, they turn a  
14 young Negro man out of Meadville jail, and the Ku Klux Klan  
15 took charge of him and beat him unmerciful and left him for  
16 dead. The young man came to and made his escape. He left  
17 Franklin County or Mississippi."

18 THE COURT: Again, I advise the jury that this  
19 reference, this paragraph has nothing to do with this  
20 defendant. The government is not contending that it does.  
21 This has been allowed -- I've allowed this to remain for your  
22 consideration when you assess the credibility of the journal  
23 and its authorship.

24 BY MR. LAMPTON:

25 Q. I'm going to direct your attention now to page 94 and ask

1 you if you would read that entry, please.

2 A. Yes, sir. On page 94, "On May, August 10, a carload of  
3 white men come to the home of Reverend Clyde Briggs at Roxie  
4 and shot two times at a light in his yard, broke the globe of  
5 the light, but the light kept burning."

6 Q. And that has the name Briggs --

7 A. Reverend Clyde Briggs.

8 Q. -- written?

9 THE COURT: And, again, this incident has nothing to  
10 do with the defendant. The government does not contend as much  
11 and will not offer any evidence to show any connection. I have  
12 allowed this to remain for your consideration so that you may  
13 assess the credibility of the journal, as well as its  
14 authorship.

15 BY MR. LAMPTON:

16 Q. And I have the signature from the discharge of Clyde Briggs  
17 and the Clyde Briggs that is written in the journal and ask if  
18 you've had an opportunity to view them together and to compare  
19 them.

20 A. Yes, sir.

21 Q. And can you read the last entry on that page.

22 A. Yes, sir. Same page. "No arrest was made in connection  
23 with any of those crimes, although each of them was reported to  
24 law officers of Franklin County, Mississippi."

25 Q. Based on having compared the signature of Clyde Briggs on

1 the discharge to the Clyde Briggs in the journal and based on  
2 your own knowledge of your father's writing based on having  
3 observed different letters and things that you know were  
4 written by him, do have an opinion as to whether that writing  
5 is your father's or not?

6 MS. NESTER: Object to him asking for an opinion, Your  
7 Honor. This is not an expert witness.

8 THE COURT: He can give a lay opinion.

9 BY MR. LAMPTON:

10 Q. You may answer that question.

11 A. I think it is my father's writings.

12 Q. Do you know reasonably of any other person that it could  
13 be?

14 A. No, sir. I can't think of anyone.

15 Q. Located in that journal was an old newspaper clipping. Are  
16 you aware of that?

17 A. Yes, sir.

18 MR. LAMPTON: And, Your Honor, I'm going to hand him  
19 Exhibit 86 for identification only.

20 BY MR. LAMPTON:

21 Q. I'm going to ask if you've ever seen that clipping before.

22 A. Yes, sir, I have.

23 Q. And where did you first see it?

24 A. It was found in my father's journal.

25 Q. The same journal that's in evidence that we've been looking

1 at?

2 A. Yes, sir.

3 Q. I don't want you to read it. I just simply want you to  
4 tell the ladies and gentlemen of the jury who is -- if you know  
5 who is pictured in the photograph.

6 A. According to this, it's James Seale and Charles Edwards.

7 Q. And what is the date of that clipping?

8 A. It says here Saturday, October 7, 1964.

9 MS. NESTER: Your Honor, we need to see that for just  
10 a minute, please. I'm sorry.

11 MR. LAMPTON: You can just give that back to the court  
12 security officer.

13 THE COURT: Take it back to him.

14 BY MR. LAMPTON:

15 Q. Do you have any other brothers and sisters that are still  
16 alive that are older than you are that were living at home when  
17 these events took place?

18 A. Yes, sir, I do.

19 Q. And who are they?

20 A. I have a brother Joseph, a brother Ed Bennie, I have a  
21 sister Chastisy.

22 Q. And are any of them here today?

23 A. Yes. My sister is here and my brother Joseph is here.

24 Q. Joseph is sitting in the courtroom, isn't he?

25 A. Yes, he is.

1 Q. Chastisy would have been how old, if you know, when these  
2 events occurred? You would have been seven?

3 A. She was 13 or 14. She's six or seven years older than I  
4 am, yes.

5 MR. LAMPTON: Tender the witness.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. NESTER:

9 Q. Good afternoon.

10 A. Hello, ma'am. How are you?

11 Q. Just to get this straight, make sure I understand, you are  
12 the person who provided this piece of evidence to the  
13 government. Is that right?

14 A. Yes, ma'am.

15 Q. It came from your hands to their case?

16 A. Yes.

17 Q. Okay. And we all agree that if this, in fact, was written  
18 back in 1964, you were a child then?

19 A. Seven, yes.

20 Q. So you were not present when this diary was created?

21 A. No, ma'am, I wasn't.

22 Q. You can't say that you saw anyone making an entry into this  
23 diary?

24 A. No, ma'am, I can't.

25 Q. You actually can't say that you even have a recollection of

1 these events yourself because you were a child. Correct?

2 A. I have recollection of the shooting in the home both times.

3 Q. Okay. But I'm talking about the diary being created?

4 A. Oh, no, no, ma'am.

5 Q. Okay. All right. And the first time you became aware of  
6 this piece of evidence was about 30 years -- I'm sorry -- 25  
7 years after 1964 in the '80s, I think you said '89?

8 A. Well, the first time I became aware that the writings exist  
9 was in '81. The first time I came into contact with the  
10 journal, actually seeing the journal, was in '84.

11 Q. That was 20 years later. Right?

12 A. Yes, ma'am.

13 Q. And at that point, your father was dead?

14 A. Yes.

15 Q. Okay. And so he wasn't there for you to ask about this at  
16 all?

17 A. No, ma'am.

18 Q. And during that period of time, you can't say what happened  
19 to this journal, can you?

20 A. Oh, no, ma'am, I can't.

21 Q. And even after '84, other people still maintained  
22 possession of this diary that were not you -- right -- people  
23 in your family?

24 A. Yes, my brother.

25 Q. You can't say what happened to this diary during that

1 period of time?

2 A. Cannot, no, ma'am.

3 Q. Okay. But then at some point in time it came back in your  
4 hands. Right?

5 A. Yes, ma'am.

6 Q. And, obviously, I guess it's a given, you weren't even born  
7 when your father supposedly signed this document. Right?

8 A. No, ma'am.

9 Q. And this is a copy?

10 A. Yes, ma'am.

11 Q. Do you have the original?

12 A. Not with me, I don't, but I do have the original, but not  
13 with me.

14 Q. Okay. You didn't give the original to the government?

15 A. No, ma'am.

16 Q. Now --

17 A. I gave -- well, they had possession of the original, which  
18 they made a copy of, yes.

19 Q. All right. Let's look at this. At some point this diary  
20 comes back in your hands and you start writing in it yourself.  
21 Right?

22 A. Yes, on page 58.

23 Q. Let's look at some of this. This right here, this letter  
24 to the president of Persia, did you write that?

25 A. Yes, ma'am.

1 Q. All right. And you wrote that back in -- it looks like the  
2 '80s. I can't totally tell.

3 A. '89.

4 Q. And you call yourself the servant of I am?

5 A. Yes, ma'am, in the books of Exodus.

6 Q. I'm sorry?

7 A. From the book of Exodus, the name of God, coming from the  
8 burning bush.

9 Q. Is this a rough draft of a letter you wrote to the  
10 president of Persia?

11 MR. LAMPTON: Excuse me, Your Honor. The only  
12 relevance would be that it is not Reverend Briggs' writing,  
13 what he wrote about or what he meant to do with it. It's,  
14 frankly, irrelevant other than it is not Reverend Briggs'  
15 handwriting.

16 THE COURT: Okay. The objection is overruled.

17 MS. NESTER: Thank you, Your Honor.

18 BY MS. NESTER:

19 Q. Was this a rough draft of a letter you were going to send  
20 to the president of Persia?

21 A. Yes, please.

22 Q. Did you actually send the president of Persia this letter?

23 A. I think I did send a copy of it.

24 Q. Did you get an answer?

25 A. Not that I'm aware of. I don't have a copy of anything.

1 As a matter of fact, I think I sent it to the -- one of the  
2 embassies or someone at the United Nations that was a  
3 representative of Iran at the time.

4 Q. Let's look at this other page. Okay. Is that your  
5 handwriting?

6 A. Yes, ma'am, it is.

7 Q. All right. And you have in here some references to whether  
8 or not the FBI murdered your father?

9 A. Yes, ma'am.

10 Q. Do you believe the FBI murdered your father?

11 MR. LAMPTON: To which, Your Honor, the government  
12 would object.

13 MS. NESTER: It's in there.

14 THE COURT: The objection is overruled.

15 MS. NESTER: Thank you, Your Honor.

16 BY MS. NESTER:

17 Q. Do you believe the FBI murdered your father?

18 A. I believe they were in complicity with the Klan, yes.

19 Q. And the FBI and the Klan were working together?

20 A. That is my understanding, yes.

21 Q. And how do you think they killed your dad?

22 A. I believe it was by poisoning.

23 Q. And do you believe that the government has taken any role  
24 in covering this up as you indicate here on the bottom of the  
25 journal where you say "cold case" or "covered up case"? What

1 do you mean when you say that?

2 A. Well, certain -- I have been doing quite a bit of research  
3 myself over the years now that there's certain things that may  
4 be contradictory that the government have made, certain  
5 statements that they have made.

6 Q. All right. And you have off to the side here, right here,  
7 a reference to the death -- "gain info about Deacons of Defense  
8 and daddy's role."

9 A. Yes.

10 Q. What is the Deacons of Defense?

11 A. The Deacons of Defense is an organization during the early  
12 '60s and actually into the mid and maybe later '60s of  
13 African-American men who felt that the government was not  
14 upholding their role of protecting their families, their  
15 congregation and themselves, and they decided to form alliances  
16 to be able to protect their own families, their own selves,  
17 their own churches, because they felt that the government was  
18 not providing that type of protection.

19 Q. Was your father a member of the Deacons of Defense?

20 A. As far as I know, he was, he was one of the organizers.

21 Q. He was an organizer?

22 A. From what I've been told. It's hearsay. I guess you call  
23 it hearsay, but from what I've been told, yes.

24 Q. And when you say that they were protecting themselves and  
25 their families because the government wouldn't, in what way

1       were they protecting themselves and their families?

2       A. Well, basically by arming themselves and also by  
3       instructing and having meetings to instruct people how to  
4       secure perimeters, how to make sure that they are armed, use of  
5       firearms to be able to protect themselves.

6       Q. How are they getting the firearms to the members of the  
7       community, the African-American community?

8                    MR. LAMPTON: Your Honor, once again, I would object  
9       to this as just not being relevant and the witness not having  
10      any personal knowledge of it.

11                  THE COURT: I'll sustain the objection on personal  
12      knowledge.

13                  MS. NESTER: Okay.

14                  BY MS. NESTER:

15       Q. Let me go back, then. You gave an interview to some  
16      reporters with the Jackson Free Press awhile back, didn't you?

17       A. Yes, ma'am.

18       Q. And in that interview, you were asked about whether or not  
19      you had an understanding that there were guns hidden in  
20      Franklin County?

21                  MR. LAMPTON: Excuse me, Your Honor. Once again, I  
22      would object to an interview that he gave as just not being  
23      relevant.

24                  THE COURT: Well, I'll sustain the objection as to  
25      personal knowledge.

1 MS. NESTER: Okay. Let me ask it this way, then.

2 THE COURT: You said an understanding. You have to  
3 establish personal knowledge.

4 MS. NESTER: All right.

5 BY MS. NESTER:

6 Q. Did you make a statement to the Jackson Free Press that you  
7 believed that there were --

8 MR. LAMPTON: Excuse me, Your Honor. I object to  
9 this.

10 MS. NESTER: I'm going to ask him, but I've got to  
11 give him a statement.

12 THE COURT: I'm going to excuse the jury. Let me  
13 excuse the jury. All rise.

14 (Jury Out)

15 THE COURT: You may be seated. Let me hear what the  
16 question is.

17 MS. NESTER: Thank you, Your Honor. It's a series of  
18 three, and I'm glad that we're doing it outside the presence.  
19 So if you could let me ask all three before you make your  
20 ruling.

21 BY MS. NESTER:

22 Q. First of all, did you make a statement to the Jackson Free  
23 Press that you believed that there were, in fact, guns hidden  
24 in Franklin County even if they were not found in the church  
25 that night?

1 A. Yes, I told them that I had knowledge from talking to  
2 people that there was guns being brought in and stored and  
3 hidden in Franklin County.

4 Q. You did make that statement and it was published in the  
5 media?

6 A. Yes, ma'am.

7 Q. All right. And the knowledge that you have about that  
8 information, how did you obtain that knowledge?

9 A. As I was saying earlier when the jury was here, I've been  
10 inquisitive about my father's life. I've asked uncles. I've  
11 asked people that were in part of my father's congregations and  
12 different people that my father had associated with over the  
13 years and basically this is the conclusion that I've come up  
14 with, is that there was guns being moved in and out of Franklin  
15 County.

16 Q. Did you ever talk with your mom about it?

17 A. The only thing I had about my mom about it was that the  
18 searching of the church as to how it tied in with the gun  
19 running and encyclopedias, encyclopedias that had come and  
20 how -- the rumor had began to spread about the guns; but that's  
21 basically most of all what my mother knew about it.

22 Q. And you say "gun running", I mean, what are you talking  
23 about? Your dad was involved in shipping guns?

24 A. No. My dad was supposedly involved in receiving guns.

25 Q. How do you know that?

1 A. Just by what I've heard.

2 Q. And the research that you have done, have you uncovered any  
3 documents that have revealed that to you, any historical  
4 documents or it's been through histories that have been  
5 provided to you?

6 A. No, ma'am.

7 Q. Just what people have told you?

8 A. Yes, ma'am.

9 Q. Can you identify who has told you that information?

10 A. Yes. My uncle Percy, my uncle Ernest. They're both  
11 deceased. Also have people like my -- well, not my godfather.  
12 The guy I'm named after, he have told me incidents of things  
13 that would happen --

14 MR. LAMPTON: Your Honor, I realize this is outside of  
15 the presence of the jury, but I would still object to it as,  
16 frankly, just being a fishing expedition and having no  
17 relevance to what's before this jury.

18 THE COURT: Okay. Let me see where you're going. Go  
19 ahead.

20 BY MS. NESTER:

21 Q. Anyone else that gave you that information that's still  
22 alive today?

23 A. No, ma'am.

24 Q. Everybody that's told you that is deceased?

25 A. Yes, ma'am. I'm sorry. Pretty much like this case, I

1 guess.

2 Q. When they told you that, is that when you recorded it in  
3 this journal?

4 A. I'm sorry?

5 Q. When they gave you that information, you recorded it in  
6 this journal?

7 A. I don't have anything in a journal about -- I didn't record  
8 anything in a journal -- you mean as far as the interview I  
9 gave?

10 Q. No. I'm talking about at the -- your reference to the  
11 Deacons of Defense in this journal.

12 A. Oh, no, ma'am. That was done January of this year. That  
13 entry was January of this year.

14 Q. And where did you get the information about your father's  
15 role in the Deacons of Defense?

16 A. Over the years between, I would say, '77. Like I say, I --  
17 coming with the military service, I come in and out of town  
18 back and forth and basically just talking to people, being  
19 inquisitive.

20 Q. And when you put your information in this journal about the  
21 Deacons of Defense, why did you put that in this journal?

22 A. It was in the process of having an interview on the radio,  
23 and I was bringing the journal itself with me and it was just  
24 something that because it was all -- the program was about the  
25 Dee/Moore case, and I put notations in there. And actually

1 what you can see there are points that I was going to make  
2 during the radio interview.

3 MS. NESTER: Your Honor, at this point, we're ready to  
4 argue, but I would ask the witness to step outside while we  
5 make our presentation to the court.

6 THE COURT: All right. Step outside for a moment.

7 (Short Pause)

8 THE COURT: Okay. Make your argument.

9 MS. NESTER: Your Honor, the government has moved to  
10 introduce this journal into evidence over my objection. The  
11 court has allowed this journal to come in and has repeatedly  
12 instructed the jury that it is coming in to allow them to judge  
13 the credibility of this journal as a whole, every page. This  
14 issue, this man has written down, clearly I have a right to  
15 impeach him on the information that he's putting in this  
16 journal that is either he has personal knowledge or else he can  
17 be impeached because he wrote down things he has no knowledge  
18 of. Either way, I'm entitled to attack the credibility of  
19 these notes. It's in the government's exhibit. I didn't want  
20 it in; they did. It's in, and now I have a right to impeach  
21 this witness about it.

22 THE COURT: Ms. Nester?

23 MS. NESTER: Yes, sir.

24 THE COURT: Then you remember that I advised the jury  
25 that they are not -- they are only to consider the journal as a

1 whole as to its authorship and to its credibility, but the  
2 witness has already testified as to what notes he put in there.

3 MS. NESTER: Yes, sir.

4 THE COURT: It is not being admitted for that, and I  
5 will advise the jury further that his notes do not bear on this  
6 matter either. So, then, there's no reason to impeach him on  
7 what he put in there when I'm going to give this instruction.

8 When I heard again that the witness had put something in  
9 the journal and had written something at length, the thought  
10 occurred that this ought to be redacted, but the government did  
11 not ask for any kind of redaction. I agree with you on that,  
12 that the government did not ask for a redaction. Therefore, I  
13 allowed you to ask him what he had put in the journal and talk  
14 about that portion. I saw it when I reviewed it, but the  
15 government wanted it in its entirety so I put it in in its  
16 entirety. But that -- those portions written by the witness  
17 have no bearing on this case.

18 MS. NESTER: Well, the only concern I have, Your  
19 Honor, is this man has given statements to the press that he  
20 apparently had no knowledge about which affects his credibility  
21 as a witness. They're asking this jury to take this man's word  
22 about this document, about his father, about everything, and  
23 the man has made statements publicly that are unsupportable,  
24 and I have a right to impeach his credibility because the  
25 government has turned him into a witness.

1           THE COURT: I have allowed you to explore that  
2 already.

3           MS. NESTER: Yes, sir.

4           THE COURT: You've done it in front of the jury.

5           MS. NESTER: Yes, sir.

6           THE COURT: Now, I don't see what further inquiry  
7 needs to be made when you have already questioned him about his  
8 beliefs and why he made notations in the journal.

9           MS. NESTER: Well, the concern that I have at this  
10 point is the government's repeatedly made the statement to this  
11 court that the search of the church was a ruse, and actually  
12 this individual has spoken with members of his family that said  
13 that they actually were running guns through the churches back  
14 then, and I do think the jury is entitled to know that.

15           THE COURT: How can you get that in under the Rules of  
16 Evidence? What's your exception? Clearly, you know it's  
17 hearsay.

18           MS. NESTER: Yes.

19           THE COURT: What's your rule of evidence? What's your  
20 exception?

21           MS. NESTER: Well, the government has brought in the  
22 evidence about the search. I have a right to flesh out the  
23 search. When they put their witness up there, they got him to  
24 testify to the hearsay of what he was told by the brother who  
25 was locking up the church. I'm not offering this stuff for the

1 truth of matter asserted. I'm offering it to show that there's  
2 alternative theories in the same family, in the same community  
3 that rebut the theories that the government has.

4 THE COURT: Sounds to me like you're offering for the  
5 truth of the matter asserted. Now, I'm asking you again, what  
6 rules of evidence do you have that you want to point to? What  
7 is the exception?

8 MS. NESTER: It's pure impeachment, Your Honor, and  
9 it's pure rebut to rebut what the government has already put on  
10 through their witness through hearsay.

11 THE COURT: All right. Then, you apparently have no  
12 rule and it is not admissible.

13 Now, you want to examine the witness on some other points?

14 MS. NESTER: One moment, please, Your Honor.

15 THE COURT: Okay.

16 (Short Pause)

17 MS. NESTER: I found one rule, 803, Section 23.

18 THE COURT: I don't think that's going to fit, but  
19 I'll let you go ahead and make your argument for the record.

20 MS. NESTER: That's all right. I won't waste your  
21 time.

22 THE COURT: Go ahead. Ms. Nester, you can put it on  
23 the record if you want to. The rule you're referring to is  
24 when no other rule applies and the court feels that some  
25 indicia of reliability is established by the trustworthiness of

1 something associated with the testimony that the court ought to  
2 let it in.

3 MS. NESTER: Yes, sir.

4 THE COURT: All right.

5 MR. LAMPTON: Your Honor, the government would ask  
6 that the jury be instructed that the testimony from this  
7 witness that he has no personal knowledge of should not be  
8 considered, it should be stricken.

9 THE COURT: Well, I didn't say I would do that.

10 MR. LAMPTON: I'm sorry?

11 THE COURT: I did not agree to that.

12 MR. LAMPTON: I just asked you.

13 THE COURT: Yes, I'm going to overrule that  
14 objection -- well, deny that request.

15 MS. NESTER: I do have some more questions for the  
16 witness, Your Honor.

17 THE COURT: Okay. Let me hear what they are so I know  
18 if I have to excuse them.

19 MS. NESTER: I'm not going to go into -- I'll leave  
20 that alone. I know you made your ruling, and I'll respect it  
21 about the Deacons of Defense.

22 THE COURT: No, I mean, where are you going with the  
23 rest of the journal, though, so I will know before I have to  
24 excuse the jury again?

25 MS. NESTER: I'm just going to point out that this is

1 the only section of the journal where there's any relation or  
2 any indication about this particular year and that none of the  
3 rest of the journal has year entries or anything to do with  
4 this case at all. That's all. I'm just going to wrap up with  
5 that.

6 THE COURT: Are you saying there's no other reference  
7 in the journal to a year?

8 MS. NESTER: No. To this incident. Those are the  
9 only pages that relate to this case.

10 THE COURT: I was going to remind you that there are,  
11 I think, some other references to years. Do you still intend  
12 to use the journal?

13 MS. NESTER: Yes, sir.

14 THE COURT: Okay. In what respects?

15 MS. NESTER: What I just told you.

16 THE COURT: That's all?

17 MS. NESTER: Yes, sir.

18 THE COURT: Bring the witness in.

19 (Short Pause)

20 THE COURT: Now bring the jury in.

21 (Jury In)

22 THE COURT: You may be seated. Ms. Nester.

23 MS. NESTER: Thank you, Your Honor.

24 BY MS. NESTER:

25 Q. Okay. The only other thing I want to say is we're very

1 clear these two pages you wrote, not your father?

2 A. Yes, ma'am.

3 Q. Okay. And all the rest of this journal, the only pages --  
4 the only pages in this journal that relate -- that may relate  
5 to the case here and now are those three entries on pages 92,  
6 93, and 94. Right? I'm going to show you in just a sec. Is  
7 that right?

8 A. Yes, ma'am. That's related to this case.

9 Q. And that's the part about the young men not having been  
10 seen since May?

11 A. Yes, ma'am.

12 Q. And that's the part about May 2nd, him being asked to come  
13 to the church?

14 A. Yes, ma'am.

15 Q. And then that's the part about on July 13th their bodies  
16 being recovered?

17 A. Yes, ma'am.

18 Q. And this part about someone shooting into his house the  
19 night the bodies were recovered, that doesn't have anything to  
20 do with this that we're here today. We're talking about just  
21 the first part of that entry?

22 A. The Saturday, May 2nd, or the --

23 Q. No, sir. July 13th?

24 A. Yes, July 13th, is when they shot in the house supposedly  
25 also.

1 Q. I understand that your --

2 THE COURT: Speak directly in that microphone. You  
3 need to lean forward.

4 BY MS. NESTER:

5 Q. She's just got to hear to type what you're saying. I  
6 understand your dad's house got shot into that night, but the  
7 portion of that entry that relates to this case is the portion  
8 just mentioning that the young men's bodies were found that  
9 day. Right?

10 A. Yes. Yes.

11 MS. NESTER: That's all I have. Thank you.

12 A. You're welcome.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. LAMPTON:

16 Q. I believe you've already covered this, but you were how old  
17 when all these events happened?

18 A. I was seven.

19 Q. Do you have the original of that discharge?

20 A. Of my father's discharge, yes. I don't have it with me,  
21 but I do have it.

22 Q. I understand. But the copy is an accurate copy of that  
23 original?

24 A. Oh, yes, sir. Yes.

25 MR. LAMPTON: I believe that's all I have, Your Honor.

1                   THE COURT: Okay.

2                   MR. LAMPTON: Other than did we talk about another  
3 limiting instruction or not?

4                   THE COURT: The jury has been advised earlier that I  
5 have admitted the journal in its entirety and with no deletions  
6 so that you may judge the credibility of the journal as well as  
7 its authorship. So you've heard the testimony concerning the  
8 journal, and you have the journal, and you make those  
9 determinations from those points. That's the instruction.

10 Now, then, either side anticipate recalling this witness?

11                  MR. LAMPTON: No, Your Honor.

12                  MS. NESTER: No, sir.

13                  MR. LAMPTON: Unless there's some issue about the  
14 discharge. May he be just subject to recall if that comes up?

15                  THE COURT: Well, he's -- if you need to call him  
16 later, then he is still under the rule of sequestration. If  
17 you're sure that he will not be needed later, then he is not  
18 subject to the rule and may remain in the courtroom, but you  
19 would have to make that call.

20                  MR. LAMPTON: I'm going to ask that he remain subject  
21 to the rule.

22                  THE COURT: Okay, then. You may be called again so  
23 you can't come into the courtroom nor discuss any testimony  
24 with anyone who is present in the courtroom. Okay. You can  
25 step down. Call your next witness.

1 MR. LAMPTON: Chastisy Briggs Middleton.

2 THE COURT: All right. The next witness will be  
3 Chastisy Briggs who?

4 MR. LAMPTON: Middleton.

5 THE COURT: Chastisy Middleton. Okay. We've had a  
6 couple of breaks, and I thought we'd had a break, but we have  
7 not had a break for the court reporter, nor, for that matter,  
8 for counsel in the courtroom or the parties. So even though  
9 you all have gone out and come back in and because you had, I  
10 took that to be a break, but it's not a break for them. So I  
11 will take a recess now for the other parties to the trial. So  
12 about 15 minutes.

13 (Jury Out)

14 (Recess)

15 (Jury In)

16 CHASTISY MIDDLETON,

17 Having first been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LAMPTON:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Would you state your name for the court.

23 A. Chastisy Briggs Middleton.

24 Q. Will you spell your first name.

25 A. C-H-A-S-T-I-S-Y M-I-D-D-L-E-T-O-N.

1 Q. Where do you live, Ms. Middleton?

2 A. Fayetteville, North Carolina.

3 Q. How long have you lived there?

4 A. Sixteen years today.

5 Q. And are you employed?

6 A. Yes.

7 Q. What do you do?

8 A. I'm a supervisor at a linen company.

9 Q. And how long have you been a supervisor at the particular  
10 linen company you're at now?

11 A. The one I'm at now? Just a year.

12 Q. And before that what did you do?

13 A. The same type of work, assistant supervisor at National  
14 Linen Service for ten years.

15 Q. Did you know the man that testified just before you did?

16 A. Yes.

17 Q. And how do you know him?

18 A. That's my brother.

19 Q. Now, are you younger or older than your brother?

20 A. Older.

21 Q. Back in 1964, how old would you have been?

22 A. Thirteen.

23 Q. And how old was John?

24 A. John was born in '57.

25 Q. Now you're making me do the math. Was he around 7 years of

1 age?

2 A. Probably.

3 Q. You're about six years older than he is?

4 A. Uh-huh.

5 Q. Okay. Where did you live back in the '60s when you were  
6 growing up?

7 A. In Roxie, Mississippi.

8 Q. And who did you live with?

9 A. With my mother and father, Clyde Briggs and Mary Geraldine  
10 Briggs.

11 Q. Did you live anywhere else during the early '60s?

12 A. No.

13 Q. We know that your father was a preacher. Is that correct?

14 A. True.

15 Q. And did you attend church with him?

16 A. Yes, I did.

17 Q. Did you know Charles Eddie Moore during his lifetime?

18 A. Yes.

19 Q. And how did you know Charles Eddie Moore?

20 A. He would come to school that I was going to at the time,  
21 sit in on our classes sometimes.

22 Q. Where are you going to school then?

23 A. At Lillie Mae Bryant High School.

24 Q. And do you know where he was going to school at that time?

25 A. He was in college at that time.

1 Q. Do you know where he was going to college?

2 A. Alcorn.

3 Q. Did he attend church with you, and was your father one of  
4 his pastors?

5 A. Not that I remember.

6 Q. And he didn't attend the Roxie Baptist Church, did he?

7 A. Not that I can remember.

8 Q. You were there, ma'am, just about every Sunday, weren't  
9 you?

10 A. Yes.

11 Q. Did you know Henry Hezekiah Dee during his lifetime?

12 A. Yes.

13 Q. And how did you know Henry Dee?

14 A. Just knowing him around town.

15 Q. Was there anything unusual about the way he appeared from  
16 other young men his young age?

17 A. Yes. He -- basically the way we wore his hair.

18 Q. Would you just -- you're a lady. If you would, just kind  
19 of fill us in on that.

20 A. I remember him wearing his hair what we called back then  
21 was a process, like your hair straightened.

22 Q. Yes, ma'am. If his hair wasn't processed, what would he  
23 wear, if you know?

24 A. Well, what we call it back then, I would say we would call  
25 it a do rag. That's what they call it today. But it's like a

1       scarf that's tied around your head.

2       Q. Did you know if he had any connection with Illinois, the  
3       state of Illinois?

4       A. I don't know for sure. I've heard that he had went to  
5       Chicago and came back home.

6       Q. And where did he attend church, if you know?

7       A. I don't know.

8       Q. Do you know whether or not he attended the Roxie Baptist  
9       Church?

10      A. I don't remember him attending.

11      Q. Do you know where his family lived out from Roxie, the  
12      Hunts, the Dees? Do you know where they lived?

13      A. I knew his sister.

14      Q. Which sister was there?

15      A. Thelma Dee that attended Roxie Church.

16      Q. And she lived where?

17      A. She lived there in Roxie, as far as I can remember.

18      Q. Let me direct your attention to --

19                    MR. LAMPTON: First of all, Your Honor, may I have the  
20                    witness shown the journal that we have talked about,  
21                    Exhibit 32A.

22                   THE COURT: Okay.

23                   BY MR. LAMPTON:

24      Q. I have shown you what purports to be a handwritten journal  
25      and let me ask you, Ms. Middleton, if you can identify that

1 document.

2 A. Yes.

3 Q. And how can you identify it? What do you know it to be?

4 A. A journal with some of my father's handwriting in it.

5 Q. Do you know what other handwriting is in the journal other  
6 than your father's?

7 A. It looks like some of my brother John's handwriting.

8 Q. Would you look on pages 92, 93, 94 and 95, please, and can  
9 you tell whose handwriting is on those pages?

10 A. My father's.

11 Q. Now, on page 93, if you would turn to that page. I'm going  
12 to ask you if you have any knowledge or any remembrance of the  
13 events that are related on Saturday, May 2nd, when your  
14 father's church in Roxie was searched for guns.

15 A. Yes.

16 Q. Were you old enough to where you could remember on your own  
17 what happened?

18 A. I remember when it was during maybe a week or so before  
19 that time. Daddy received encyclopedias through the post  
20 office. They came in two large boxes, and he brought them to  
21 the house. But on -- I remember later my mother saying that  
22 the church had been searched for guns.

23 Q. Did your mother attribute the encyclopedias to the search  
24 at all?

25 A. No.

1 MR. LUCAS: Your Honor, we would object to any --

2 THE COURT: Hold it one second.

3 MR. LUCAS: It's clearly hearsay.

4 THE COURT: I'll sustain the objection.

5 MR. LAMPTON: Your Honor, I would seek not to admit  
6 anything for the truth, but that it was just simply said.

7 THE COURT: I'll sustain the objection.

8 BY MR. LAMPTON:

9 Q. Were you aware that those encyclopedias arrived at the  
10 house before the church was said to have been searched?

11 A. Yes.

12 Q. If you would, just describe for the jury, if you remember,  
13 how big the boxes were and what was in the boxes and where your  
14 father went to get those boxes.

15 A. He went to -- he picked the boxes from the post office. He  
16 said that's what he was going to the post office and he came  
17 back home with the big boxes. They were about this long and  
18 maybe that wide.

19 THE COURT: You need to estimate that for the record.

20 MR. LAMPTON: Approximately three feet by three feet.

21 BY MR. LAMPTON:

22 Q. Does that sound right about the boxes, about three feet by  
23 three feet?

24 A. Probably.

25 Q. And were you there when the encyclopedias were brought

1 home?

2 A. Yes.

3 Q. Did you know Oscar Hughes at that time?

4 A. Yes.

5 Q. Would you tell the ladies and gentlemen of the jury who  
6 Oscar Hughes was, how you knew him in May of 1964.

7 A. He was a deacon at Crosby Baptist Church, one of the  
8 churches my father pastored.

9 Q. Were he and your father friends?

10 A. Yes, they were.

11 Q. Will you look at the next entry in the journal that talks  
12 about Sunday night, May 24th.

13 MR. LUCAS: Your Honor, we would object to any  
14 discussion of this. We've already been through this with  
15 Mr. Briggs.

16 THE COURT: Let me hear the question.

17 BY MR. LAMPTON:

18 Q. Do you have -- your father in that entry mentions a man  
19 named Jack Davis.

20 A. Yes.

21 Q. And did you know Jack Davis?

22 A. Yes.

23 Q. And how did you know him?

24 A. I knew him --

25 MR. LUCAS: Your Honor, I renew my objection to this.

1                   THE COURT: One second. Hold it. I need to excuse  
2 you all again. All rise.

3                   (Jury Out)

4                   THE COURT: You may be seated. Now, Mr. Lampton,  
5 where are we going?

6                   MR. LAMPTON: I was going to ask her -- and I can do  
7 that outside the presence of the jury -- if she knew Jack Davis  
8 and how she knew him. And then I was going --

9                   THE COURT: Mr. Lucas, you can have a seat.

10                  MR. LAMPTON: I was going to ask her if you had  
11 occasion to see Jack Davis on the night of May 24, 1964.

12 A. Yes, I did.

13                  THE COURT: Now, let me see that journal again,  
14 please.

15                  (Short Pause)

16                  THE COURT: Ask the questions.

17 BY MR. LAMPTON:

18 Q. Did you have occasion to see Jack Davis on Sunday night,  
19 May 24th of 1964?

20 A. Yes, I did.

21 Q. And where did you see him?

22 A. At our home.

23 Q. And would you just tell the court very briefly under what  
24 circumstances you saw him and what happened.

25 A. Daddy had went to church, and we would stay up until he got

1 home, me and my mother. And he was blowing his car horn coming  
2 home.

3 Q. "He" being?

4 A. My father. And we always would have lights off in the  
5 house waiting for him to come in. We would leave the gate to  
6 the house -- to the driveway open for him to come back in so he  
7 wouldn't have to get out and open the gate.

8 And that night when he got to the house, he pulled in the  
9 yard under the carport and a car of men pulled in behind him  
10 inside the yard. And the car door was open, and Mr. Jack Davis  
11 got out of his car, came to the side of my father's door, the  
12 driver's side, and he said something to him. I don't know what  
13 he said, but then he got back in his car and left.

14 MR. LAMPTON: Your Honor, while the jury is out, I  
15 would also ask her about Monday, July 13, the day that people  
16 first began to realize that the bodies of Charles Eddie Moore  
17 and Hezekiah Dee had been found and ask if you remembered that  
18 day and someone shooting the rifle in the house.

19 A. Yes.

20 BY MR. LAMPTON:

21 Q. And what do you remember about that day?

22 A. I remember that the shooting in the house -- the shooting  
23 in the house or the shooting at the globe, the light?

24 Q. First of all, the shooting into the house.

25 A. The shooting in the house, my father was out of town doing

1 a revival meeting in Hattiesburg. And the shot came through my  
2 bedroom. When he would go on revival out of town, I would  
3 always sleep in the front room with my mother so I wasn't in  
4 the room when the shot came through.

5 I remember him coming back home from the revival, picking  
6 me up and taking me back to Hattiesburg for the rest of the  
7 week to stay with him until the revival was over. He brought  
8 me back home with him.

9 Q. And then I believe you mentioned one other occasion when  
10 something around your house was shot into. Do you remember  
11 when that was?

12 BY MR. LAMPTON:

13 A. I remember the globe being shot at -- at the light and the  
14 streetlight at the back of the house, the globe being shot, but  
15 I remember that happening.

16 Q. Do you know if that put the light out or not?

17 A. No, it didn't. It didn't go out.

18 MR. LAMPTON: Your Honor, that's what I would tender  
19 as being Ms. Middleton's testimony concerning the events in the  
20 journal.

21 THE COURT: Response?

22 MR. LUCAS: Your Honor, we just went through a long  
23 questioning and argument about the journal and about these  
24 items in the journal, and the government assured the court that  
25 the only reason they wanted those items in was just to show

1       that Reverend Briggs kept up with things around the locality in  
2       the journal and to bolster the items that were actually  
3       relevant that were in the journal. Now they bring a witness in  
4       to testify as to the items that the court has already said  
5       should not be regarded by the jury in the journal. We would  
6       object to that testimony coming in.

7                  THE COURT: These witnesses were on your witness list.  
8       Is that correct?

9                  MR. LAMPTON: Yes, sir.

10                 THE COURT: And is the defense saying that you were  
11       not provided the name of this witness and the last witness?

12                 MR. LUCAS: No. We knew that John Briggs was going to  
13       testify, and we knew that Ms. Middleton was going to testify.

14                 THE COURT: Did you know the substance of their  
15       expected testimony?

16                 MR. LUCAS: I was not expecting her to testify to  
17       bolster items that the court had ruled were irrelevant to the  
18       trial. She could very easily have come in and testified that  
19       she remembered on May 2nd the search of the church, which would  
20       have been relevant testimony, but I had no idea she was going  
21       to be brought in to bolster these items contained within the  
22       journal that the court has already ruled were not relevant.

23                 THE COURT: All right. What says the government?

24                 MR. LAMPTON: I mean, I think they are relevant in  
25       determining the --

1                   THE COURT: I'm not talking about relevance at this  
2 point. I'm asking about what you advised the defense as to the  
3 witness' expected testimony.

4                   MR. LAMPTON: Yes, sir. They have a 302 that was  
5 prepared by the FBI that they have seen. It talks about the  
6 guns and the transportation. It talks about Jack Davis, and it  
7 is very similar to her testimony. She talks about the shooting  
8 traveling through the Middleton's (sic) bedroom, the shooting  
9 was investigated by Deputy Sheriff Kirby Shell. It talks about  
10 the vehicle, the unknown make and model pulled into the  
11 driveway behind the father's vehicle.

12                  THE COURT: You can stop. I'm going to overrule the  
13 objection, but I will give another limiting instruction to the  
14 jury. The limiting instruction will advise the jury that this  
15 witness' testimony does not pertain to the specific charges  
16 here before the court, that the witness' testimony should be  
17 adjudged by the jury only as to the credibility and authorship  
18 of the journal.

19                  MR. LUCAS: Your Honor, if we might have just a  
20 moment, we -- I'm not certain that I have seen her 302. I'm  
21 not certain we received it. Ms. Nester is going to check.

22                  THE COURT: Okay.

23                  MR. LUCAS: We have witness files on everyone  
24 containing their 302s, and we don't have one on her.

25                  (Short Pause)

1                   MR. LUCAS: Your Honor, I can't find where we have  
2 received a 302 on Mrs. Middleton. I wanted to double-check  
3 because we did receive some on Reverend Middleton, who is a  
4 different individual with the same name.

5                   MR. LAMPTON: Your Honor, there's been a good deal of  
6 discovery given out. I have the 302. I'll let counsel look at  
7 it.

8                   MS. NESTER: There's no Bates number.

9                   MR. LAMPTON: If it wasn't given to them, it was  
10 certainly an oversight, and I will provide it to them now.  
11 Maybe they need to take a break to look at it or talk to the  
12 witness, but it was -- the 302 was prepared in August of 2006.  
13 So we've had it for -- certainly for a while and her name has  
14 been on the witness list.

15                  THE COURT: Give them the 302, and I will take a  
16 recess now for the balance of the afternoon. We'll resume  
17 tomorrow morning after they've had a chance to look at the 302  
18 and then to prepare for any cross-examination. Who will be the  
19 witnesses for tomorrow?

20                  MS. FITZGERALD: Your Honor, that's actually a topic  
21 that we need to discuss with the court. One of the items that  
22 the court has reserved ruling on, if the court would be so  
23 inclined after excusing the jury this afternoon, we would like  
24 to readdress because it will impact what witnesses testify  
25 tomorrow, and that's specifically the admissibility of the --

1 and maybe I shouldn't be doing this in front of the witness.

2 THE COURT: Okay. Let me have you step down for a  
3 moment.

4 MS. FITZGERALD: Sorry. I just realized that she was  
5 still sitting there.

6 MR. LAMPTON: She needs to be told she shouldn't talk  
7 about her testimony and --

8 THE COURT: Don't talk to anyone about your testimony  
9 or anything that's transpired in this courtroom. Okay. All  
10 right. Now, then, yes.

11 MS. FITZGERALD: That's the admissibility of the  
12 defendant's letter to the Franklin Advocate, and at this time,  
13 Your Honor, the government would renew its request to allow the  
14 admission of that particular item, particularly since the court  
15 has now had an opportunity to look at case law, et cetera,  
16 regarding ancient documents. We anticipate that the chancery  
17 clerk, Jimmy Jones, will be coming with a bound volume of the  
18 Franklin Advocates which he is required by state statute to  
19 maintain, the chancery clerk is required to maintain. He has a  
20 1964 bound volume that contains this particular newspaper that  
21 had the letter in it. Obviously, the circumstances under which  
22 it was found then subject it -- indicate that it is, in fact,  
23 authentic. It has been in existence for more than 20 years.  
24 There's no suspicion as to its authenticity and, therefore, any  
25 other issue with regard to that document simply goes to its

1 weight.

2 THE COURT: Now, you're arguing a motion that I don't  
3 have in front of me right now. I was -- I was dealing with  
4 something else.

5 MS. FITZGERALD: Thank you, Your Honor. That is one  
6 issue that we --

7 THE COURT: One second, hold it. Wait a minute. Was  
8 the 302 furnished?

9 MS. FITZGERALD: I'm not sure, Your Honor. I'm not  
10 sure. We're trying to go through our discovery list to see if  
11 it was.

12 THE COURT: Mr. Lucas, were there items submitted to  
13 you Bates stamped?

14 MR. LUCAS: I'm going to let Ms. Nester address that,  
15 Your Honor.

16 MS. NESTER: Your Honor, we got our Jencks Act  
17 material on the 25th of May, which was the day that they had --  
18 were required to turn over all the Jencks Act. They take the  
19 position that all the 302s are Jencks Act. I have a complete  
20 set of what we got Bates stamped 1245 -- I'm sorry -- 1405  
21 through 1645 consisting of the Jencks Act materials, and we --  
22 so far everyone that's testified we have received except for  
23 Ms. Middleton. She is not in here.

24 THE COURT: Now, have you carefully gone through that  
25 group?

1 MS. NESTER: Yes, sir. We also don't have a witness  
2 file for her. What we did when we got the Jencks Act material  
3 was went through and copied everything in it and put it in the  
4 witness file, and we don't even have a witness file for her.  
5 So, I mean, it's just not in here.

6 MS. FITZGERALD: Your Honor, I will accept counsel's  
7 representations. If it was not provided, it was simply an  
8 oversight, and I apologize. We'll be more than happy, again,  
9 to provide the 302 to her at this point. She has been on the  
10 witness list. There hasn't been any inquiry of the government  
11 saying, "We don't have anything on this witness. Do you have  
12 something?" We would have been happy to provide it. Again, if  
13 it has not been provided, and I accept counsel's  
14 representations that they didn't receive it, then it was simply  
15 an oversight.

16 THE COURT: What about the rest of the witnesses?

17 MS. FITZGERALD: Is the court inquiring as to the  
18 witnesses for tomorrow?

19 THE COURT: And whether the 302s for the remaining  
20 witnesses have been submitted.

21 MS. FITZGERALD: I can check with counsel, but I  
22 believe that they all have.

23 THE COURT: Okay. I want to be sure that they have.

24 MS. FITZGERALD: I understand.

25 THE COURT: Now, then, first of all, I want you all to

1 meet after I recess to determine, if you can, whether this 302  
2 was actually received by defense. Secondly, whether the 302s  
3 have been submitted on all the other witnesses who are expected  
4 to testify for the government.

5 MS. FITZGERALD: Yes, Your Honor.

6 THE COURT: Then, I turn to the defense, Ms. Nester,  
7 you're supposed to submit to me a response to the motion  
8 concerning a letter and -- of another witness, not the witness,  
9 but a matter from the FBI report.

10 MS. NESTER: Yes, sir. I will get that to you either  
11 tonight or first thing in the morning as we discussed.

12 THE COURT: Have it to me at least by 8:00.

13 MS. NESTER: Yes, sir.

14 THE COURT: Now --

15 MS. FITZGERALD: I'm sorry, Your Honor. I'm not sure  
16 what we're talking about.

17 MS. NESTER: The response to Gilbert.

18 MS. FITZGERALD: Oh, Gilbert. Yes.

19 THE COURT: The Gilbert matter. She's going to get me  
20 my response, then, no later than 8:00 in the morning and, of  
21 course, the response to the government.

22 MS. NESTER: Yes, of course.

23 THE COURT: And then, thereafter, I will have a  
24 session with you all, first of all, on this 302 matter  
25 concerning this witness, 302 matters concerning all other

1       witnesses, because I want to be sure those 302s have been  
2       submitted, and then the response to the Gilbert matter. Now,  
3       how many more witnesses do you have tomorrow and then we come  
4       back to this other point that you made or these other questions  
5       you have?

6             MS. FITZGERALD: Your Honor, I'm not sure how quickly  
7       we're going to be going. I'm happy to tell -- I provided  
8       defense counsel with our witnesses. I'm happy to tell who we  
9       still have outstanding at this point, but there are a couple of  
10      issues that the court hasn't ruled on. We still have  
11      outstanding Wesley Luckey, we still have Dr. Hayne, and I  
12      haven't spoken with him about his schedule for tomorrow. We  
13      still have Wayne Finley. We still have Don Irby. We still  
14      have Donald Butler. We still have Reesie Timmons. We still  
15      have R. W. Middleton. We still have Linda Luallen, Jimmy  
16      Jones, Mary -- I can't remember her middle name -- but Mary --  
17      may be Mary Lou Webb. Jim Ingram, Thomas Moore, possibly Jerry  
18      Mitchell, and Ed Putz.

19             THE COURT: How many witnesses? I didn't count them.  
20      How many are there?

21             MS. FITZGERALD: Fifteen, 16, including Ms. Middleton,  
22      17 including the remainder of Mr. Edwards. The majority of  
23      these witnesses we expect to be fairly short.

24             THE COURT: Now to the next matter, on the matter of  
25      the letter allegedly written by Mr. Seale.

1 MS. FITZGERALD: Yes, Your Honor.

2 THE COURT: I would have to have an evidentiary  
3 hearing on that point.

4 MS. FITZGERALD: I can proffer to the court that the  
5 expected testimony of the chancery clerk will be this is a  
6 bound volume from 1964 of all of the Franklin Advocates that  
7 were published during the year of 1964 which he found in the  
8 chancery clerk area where he maintains all of the volumes  
9 throughout all of the years and which he is required to  
10 maintain by state statute.

11 THE COURT: That this article appeared in the paper?

12 MS. FITZGERALD: He will testify that these are  
13 Franklin Advocates and the letter, in fact, appears in a  
14 Franklin Advocate newspaper that is maintained by the chancery  
15 clerk, yes, Your Honor.

16 THE COURT: Okay.

17 MS. FITZGERALD: So at that point, the government --  
18 it's not -- it's not violative of the confrontation clause or  
19 Crawford because it's nontestimonial that we go into whether or  
20 not it's hearsay exception. The hearsay exception is 803(16),  
21 an ancient document. Then we go to 901(8) and determine  
22 whether or not it's an ancient document that is  
23 self-authenticating or -- not self-authenticating -- but that  
24 it is properly authenticated. This witness we expect will  
25 testify that this particular ancient document is located in a

1 place where it is likely to be located if it were, in fact,  
2 what it purports to be, that there are no circumstances and no  
3 suspicions that it is not what it purports to be, and that it  
4 has, in fact, been in existence for 20 years or more. At that  
5 point, any other issue goes to its weight, not to its --

6 THE COURT: On authentication, then, what's your proof  
7 on authentication?

8 MS. FITZGERALD: Your Honor, it's a newspaper that has  
9 been in existence for 20 years and is maintained by the  
10 chancery clerk.

11 THE COURT: I understand that, but you are arguing  
12 that the author is the defendant.

13 MS. FITZGERALD: Your Honor, that, again, goes  
14 actually to the weight. It doesn't go to the admissibility.

15 THE COURT: Okay. I understand your argument, but --

16 MS. FITZGERALD: Your Honor, I would refer -- if I  
17 could have just a moment, I can refer the court to a case. I  
18 believe this is also mentioned in the government's trial brief,  
19 which we provided to both the court and counsel I believe on  
20 May 25th. And I'm referring the court to *Dallas County v.*  
21 *Commercial Union Assurance Company*. It is 286 F.2d 388. It's  
22 a January 17th, 1961, opinion in the Fifth Circuit.

23 And in that case, they admitted a newspaper article that  
24 contained hearsay, saying that it is a newspaper that was  
25 publicly printed, that there has been no -- nothing that has

1 happened in the intervening time period to cast any aspersions  
2 on its authenticity and that that's an ancient document and  
3 that was the end of inquiry, a newspaper article that was  
4 properly authenticated as being one in that newspaper and that  
5 it had been in existence for 20 years or more. That was the  
6 end of the inquiry, as it should be in this case.

7 In this particular case, that document has been maintained.  
8 There's no suspicion as to what it is. There has been no  
9 intervening controversy or anything else. And we can also call  
10 the publisher, the now publisher of the newspaper, who is the  
11 wife of the individual who was the publisher at the time. And  
12 she would be expected to testify that there were certainly no  
13 complaints, no lawsuits, no anything -- nothing that was ever  
14 brought to her attention that anybody ever indicated that the  
15 author of that article -- of that particular letter was anybody  
16 other than the defendant and that she would have expected if  
17 somebody had published a letter like that and it had not been  
18 authored by the person who is purported to be the author, that  
19 they would have received such a complaint.

20 THE COURT: I will hear whatever evidence you have  
21 relevant to that newspaper article tomorrow afternoon, but I  
22 want to hear some other testimony tomorrow morning. What  
23 witnesses would you have that you could call tomorrow morning,  
24 because by the time we get to that testimony, I would have  
25 expected it might take some time. I'll probably be recessing

1 after that. Do you have other witnesses you can call during  
2 the day?

3 MS. FITZGERALD: I do, Your Honor. If I could stick  
4 with that point for just a moment. If we're going to be  
5 calling Ms. Webb, she had requested that she be able to testify  
6 on Friday, and I have not spoken with her, and I hadn't had a  
7 chance to relay to her counsel's concern with regard to the  
8 funeral. Her paper is published on Thursdays, and she's  
9 indicated that it would be -- of any day of the week, that  
10 would be the very worst one for her to have to come up here  
11 for. I am simply relaying that to the court. If the court  
12 wishes her to be here, I will make sure that she is.

13 THE COURT: No, but I'm not going to take the  
14 witnesses out of turn if they relate to this matter of the  
15 article. Do you have witnesses who are specifically to testify  
16 about something concerning the article?

17 MS. FITZGERALD: I'm not sure that I understand the  
18 court's question.

19 THE COURT: Earlier when you were asking me about --  
20 when you made the comment about the witnesses who are to  
21 testify, that you have left to call --

22 MS. FITZGERALD: I was referring to the chancery  
23 clerk, Mr. Jimmy Jones, and to Mrs. Webb.

24 THE COURT: Okay. I understand that. We'll take  
25 those up later, then.

1 MS. FITZGERALD: That's fine.

2 THE COURT: Who will you call tomorrow morning?

3 MS. FITZGERALD: We anticipate recalling

4 Ms. Middleton-Briggs, we anticipate calling Wesley Luckey,

5 perhaps Dr. Hayne. I'll need to check with his schedule.

6 Wayne Finley. I'm not sure what the status is on Mr. Irby, if

7 we are able to get him here. I'm not sure what the status is

8 with regard to either Mr. Butler or Mr. Timmons. If they are

9 available, then they would be tomorrow. If they are not, then

10 we would be moving into Mr. Middleton and Ms. Luallen.

11 THE COURT: Now, do you need to call any more  
12 witnesses to verify the contents of this journal?

13 MS. FITZGERALD: No, Your Honor.

14 THE COURT: So this is the last witness or the only  
15 witness on it?

16 MS. FITZGERALD: Yes, Your Honor.

17 THE COURT: Okay, then. Now, Ms. Nester, you said you  
18 can have my brief for me tomorrow morning at 8:00?

19 MS. NESTER: Yes, sir.

20 THE COURT: Then at 9:00, we'll congregate and I'll  
21 tell the jury to come back at 9:30. Now, the issues before the  
22 court are the one on the Gilbert matter and on the 302.

23 MS. FITZGERALD: That's correct.

24 THE COURT: And the 302s in general. Are there any  
25 other matters I need to take up now?

1 MS. FITZGERALD: Your Honor, as referenced in the  
2 government's brief, the government is not -- is seeking both to  
3 admit Mr. Gilbert's statement and to admit Edwards'  
4 November 6th of 1964, 302 and the reasons for that as set forth  
5 in the government's brief.

6 THE COURT: Okay. Are there any other issues I need  
7 to hear about now?

8 MS. FITZGERALD: Your Honor, I might seek  
9 clarification. Cocounsel is advising me that he believes that  
10 there is an outstanding ruling with regard to Ms. Luallen's  
11 testimony, and I have to admit that I don't recall whether  
12 there was or was not, but that may be something that we need to  
13 address.

14 THE COURT: What is it?

15 MR. GIBSON: Your Honor, there was a motion in limine  
16 that was argued before we began opening statements in this  
17 case. Ms. Nester was objecting to portions of Ms. Luallen's  
18 testimony. The argument was along the lines of 404(b). It was  
19 proffered as motive evidence and also it's intrinsic to this  
20 case in that the government's position is that the defendant's  
21 racist motivation and racist expressions to Ms. Luallen were  
22 relevant in its case in chief.

23 There was also the matter of her proffered testimony that  
24 she had seen personally the defendant's Klan robe that was  
25 stored in his home, along with home movies that had been

1 displayed to her by the defendant taken by the defendant at  
2 Klan rallies in the 1960s. My understanding -- and I will, of  
3 course, defer to the court, but my understanding was that we  
4 had moved past the admissibility of the robe and her testifying  
5 about the movies that she had shown, but the court had inquired  
6 of me specifically, as I recall, the timing and the dates  
7 relevant to the comments made by the defendant which we contend  
8 are consistent with a racist motivation as it connects to this  
9 crime.

10 And after the hearing on the motion in limine, my  
11 understanding from the court was that you were holding that  
12 ruling in abeyance until later in the trial, and if I'm in  
13 error about that, then I'm sure the court can correct me, but  
14 that was my understanding of the ruling.

15 THE COURT: This is not the witness who will testify  
16 tomorrow?

17 MR. GIBSON: Well, she could potentially testify  
18 tomorrow, Judge, based on the -- our attempt to coordinate now  
19 given that Mr. Edwards' testimony is outstanding and needs to  
20 be completed and also Dr. Hayne. In order to accommodate the  
21 court and fill the day for the jury, we wanted to make sure we  
22 had witnesses available. If we get down to Ms. Luallen, we  
23 would have to address that issue and get clarification prior to  
24 her testimony.

25 THE COURT: Okay.

1 MS. FITZGERALD: Your Honor, I do expect that we will  
2 get to her tomorrow.

3 THE COURT: Okay. Then advise me prior to her  
4 testimony that we need to take the matter up, and I'll take it  
5 up outside the presence of the jury.

6 MR. GIBSON: Very well.

7 THE COURT: Now, does the defense have any matters you  
8 need me to be aware of or be apprised of before we recess for  
9 the afternoon?

10 MS. NESTER: No, sir.

11 MR. LUCAS: I can't think of any, Your Honor.

12 THE COURT: Okay. Then I'll see counsel and the  
13 parties here at 9:00 tomorrow, and I'm going to tell the jury  
14 to come at 9:30. Bring the jury in.

15 MR. LUCAS: Your Honor, I have found out the funeral  
16 that I spoke of earlier is Friday at 10:30, Your Honor.

17 THE COURT: Well, take that up tomorrow with me. It's  
18 Friday at 10:30?

19 MR. LUCAS: Yes, sir. It's a Catholic funeral, which  
20 they normally take substantially longer than Baptist funerals  
21 which I'm used to.

22 THE COURT: Bring the jury in.

23 (Jury In)

24 THE COURT: You may be seated. We're going to recess  
25 for the balance of the afternoon and resume tomorrow morning at

1 9:30, 9:30.

2 And you recall the instructions I gave you previously.

3 Okay. You know not to pay any attention to anything which  
4 might appear in the news, nothing. And not to discuss the case  
5 with anyone nor let anyone talk to you at all about this case.

6 Now, then, I'll see you all tomorrow morning at 9:30, 9:30.

7 All rise.

8 (Jury Out)

9 THE COURT: We are in recess until 9:30.

10 (Recess)

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1 CERTIFICATE OF REPORTER  
2

3 I, CHERIE GALLASPY BOND, Official Court Reporter, United  
4 States District Court, Southern District of Mississippi, do  
5 hereby certify that the above and foregoing pages, pages 854  
6 through 1487, contain a full, true and correct transcript of  
7 the proceedings had in the aforesigned case at the time and  
8 place indicated, which proceedings were recorded by me to the  
9 best of my skill and ability.

10 I certify that the transcript fees and format comply  
11 with those prescribed by the Court and Judicial Conference of  
12 the United States.

13  
14 This the 14th day of September, 2007.

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18 CHERIE GALLASPY BOND  
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